

EXHIBIT 28

SARAH SIMMERS

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

AWARE PRODUCTS LLC,
D/B/A VOYANT BEAUTY,
Plaintiff,

vs.

No. 4:21-cv-249-JCH

EPICURE MEDICAL, LLC,
FOXHOLE MEDICAL, LLC,
and LEE ORI,
Defendants.

_____/

REMOTE VIDEOTAPED DEPOSITION SARAH SIMMERS

ST. LOUIS, MISSOURI

TUESDAY, MARCH 29TH, 2022

REPORTED BY:

DEBORAH HABIAN, RMR, CRR, CLR

JOB NO. 208448

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2			2	APPEARING REMOTELY VIA ZOOM	
3			3		
4			4	ON BEHALF OF THE PLAINTIFF	
5			5	SHER TREMONTE	
6	March 29, 2022		6	BY: ROBERT PENN, JR., ESQ.	
7	11:05 A.M. CST		7	90 Broad Street	
8			8	New York, New York 10004	
9			9		
10			10		
11	Remote videotaped deposition of		11	ON BEHALF OF THE DEFENDANTS	
12	SARAH SIMMERS, appearing at St. Louis, Missouri,		12	KORANTENG LAW FIRM	
13	USA, pursuant to notice, appearing remotely via		13	BY: FIBBENS KORANTENG, ESQ.	
14	Zoom conference before Deborah Habian, an		14	5050 Quorum Drive	
15	Illinois Certified Shorthand Reporter, Missouri		15	Dallas, Texas 75254	
16	Certified Court Reporter, Registered Merit		16		
17	Reporter, Certified Realtime Reporter, Certified		17		
18	Livenote Reporter.		18	ALSO PRESENT:	
19			19	Rudolfo Durand, TSG videographer	
20			20		
21			21		
22			22		
23			23		
24			24		
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1	SARAH SIMMERS	Page 8	1	SARAH SIMMERS	Page 9
2	THE VIDEOGRAPHER: Good morning,		2	Medical LLC, et al. Today is March 29, 2022.	
3	Counselors. My name is Rudolfo Durand. I am		3	The time is 11:05 a.m. Central Daylight Time,	
4	the legal videographer in association with TSG		4	and we're on the record.	
5	Reporting, Inc. Due to the severity of the		5	Will counsel please introduce	
6	COVID-19 and following the practices of social		6	yourselves.	
7	distancing, I will not be in the same room with		7	MR. PENN: Robert Penn for the	
8	the witness. Instead, I will record this		8	plaintiff Aware Products LLC, doing business as	
9	remotely. The court reporter, Debbie Habian,		9	Voyant Beauty, and my colleague Justin Sher may	
10	also will not be in the same room and will swear		10	be joining us from his firm Sher Tremonte.	
11	in the witness remotely.		11	MR. KORANTENG: This is Fibbens	
12	Do all parties stipulate to the		12	Koranteng, and I'm appearing for the defendants,	
13	validity of this video recording, the swearing		13	Foxhole Medical LLC, Epicure Medical LLC, and	
14	in of the witness, that it will be admissible in		14	Lee Ori.	
15	the courtroom as if it had been taken following		15	THE VIDEOGRAPHER: Will the court	
16	Rule 30 of the Federal Rules of Civil Procedure		16	reporter please swear in or affirm the witness.	
17	and the state's rules where this case is		17	THE REPORTER: Raise your right hand	
18	pending.		18	please.	
19	MR. KORANTENG: We do.		19	THE WITNESS: (Complying.)	
20	MR. PENN: Yes, plaintiffs do.		20	(Oath administered remotely.)	
21	THE VIDEOGRAPHER: Thank you. This is		21	THE WITNESS: I do.	
22	the start of media labeled number 1 of the		22	THE REPORTER: Thank you so much.	
23	remote video recorded deposition of Sarah		23		
24	Simmers in the matter of Aware Products LLC,		24		
25	doing business as Voyant Beauty vs. Epicure		25		

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1 SARAH SIMMERS
2 SARAH SIMMERS,
3 called as a witness herein by the plaintiff,
4 having been first duly sworn remotely, was
5 examined and testified as follows:
6 EXAMINATION
7 BY MR. PENN:
8 Q. Good morning, Ms. Simmers. My name is
9 Robert Penn. I represent the plaintiff Aware
10 Products LLC, doing business as Voyant Beauty,
11 who I will refer to today as "Voyant."
12 I'd like to go through some -- a few
13 ground rules. Have you been deposed before?
14 A. I have not.
15 Q. Okay. So today I will ask you a series
16 of questions, and of course everything is
17 recorded. The court reporter can only take down
18 the verbal answers, so nods or shaking your head
19 will not be a sufficient answer, so try to make
20 a verbal answer, please.
21 The reporter can only take down the --
22 one person at a time, so we'll try not to speak
23 over each other, although I know on Zoom it can
24 be -- sometimes there's a little delay, so we'll
25 try not to speak over each other.

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1 SARAH SIMMERS
2 A. I reviewed e-mails. That's the only
3 preparation I did.
4 Q. And were these e-mails e-mails produced
5 by -- by your counsel?
6 A. Yes.
7 Q. When did you do your preparation?
8 A. Yesterday.
9 Q. And about how long was the preparation?
10 A. An hour.
11 Q. And you said you looked at e-mails.
12 Did you look at any other documents?
13 A. Just my Epicure Operating Agreement.
14 Q. Today you understand that you're under
15 oath today, correct?
16 A. I do.
17 Q. And that if you don't provide truthful
18 answers, that would be considered perjury?
19 A. I do.
20 Q. Is there any reason that you cannot
21 testify truthfully today?
22 A. There's no reason.
23 Q. So today we're obviously taking this
24 deposition remotely because of -- partly because
25 of the COVID situation, so I have a few

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1 SARAH SIMMERS
2 I'll do my best to look to let you
3 finish your answers, and if you could let me
4 finish my questions, that would be excellent.
5 A. Okay.
6 Q. If you don't understand a question, you
7 can ask me to -- you can tell me, you can ask me
8 to rephrase.
9 If you -- if I ask a question your
10 counsel, Mr. Koranteng, may object today. Those
11 objections are for the record, and you must
12 still answer the question. So I'm going to ask
13 the question, maybe just give a beat in case
14 there's an objection, and then you can answer
15 the question.
16 If you need a break at any time, please
17 let me know. We will try to accommodate those
18 requests, of course, but I'll ask that you
19 answer whatever question is pending at the time
20 before we take a break.
21 A. Okay.
22 Q. Okay. Did you prepare for your
23 deposition today?
24 A. Yes.
25 Q. How did you prepare?

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1 SARAH SIMMERS
2 questions related to that situation.
3 Is anyone in the room with you?
4 A. No.
5 Q. I would ask that if anyone enters the
6 room at any time that you please let me know.
7 A. Absolutely.
8 Q. And are you looking at anything other
9 than the screen upon which the deposition is
10 being taken?
11 A. Just the screen.
12 Q. So I'd ask that you please don't look
13 at anything else while we're on the record.
14 A. Okay.
15 Q. I'd like to please -- I'd like you to
16 please answer all questions by yourself and that
17 you don't look to anyone or anyone else to help
18 in answering the questions.
19 A. Okay.
20 Q. If you cannot answer a question by
21 yourself, let me know.
22 I'd also ask that you agree not to
23 communicate with anyone else besides me in any
24 way while we're on the record.
25 Do you agree to do that?

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1 SARAH SIMMERS

2 A. I agree.

3 Q. And this includes not checking e-mail,

4 text messages or other forms of communication.

5 Do you understand that?

6 A. I do.

7 Q. Okay.

8 A. I'm having a little trouble hearing

9 you, so if you see me doing this, I'm trying to

10 turn you up.

11 Q. Okay.

12 A. So if there's any way you can maybe

13 lean in, I would appreciate that.

14 Q. That's exactly what I was going to try

15 to do. How is this? A little better?

16 A. That is a little better.

17 Q. Perfect. And if it's hard to hear me

18 at any time, you can just let me know.

19 Okay. I'd like to start a little bit

20 talking about your work background and your

21 education. Did you attend a school after high

22 school?

23 A. Yes.

24 Q. Where did you go?

25 A. I went to North Dakota State University

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1 SARAH SIMMERS

2 system, checking prescriptions.

3 Q. And what was your next position after

4 that?

5 A. Home infusion pharmacy.

6 Q. I'm sorry, did you say "home infusion"?

7 A. Home infusion, yes.

8 Q. What was home infusion pharmacy?

9 A. You took -- patients were given their

10 medications in the home. Most of them were

11 intravenous.

12 Q. And was that the name of the company

13 you worked for?

14 A. No. No, that was the setting. The

15 company was Allina Home Infusion.

16 Q. And how long did you do that position?

17 A. I want to say six years.

18 Q. And you eventually left that position?

19 A. Can you repeat that?

20 Q. Did you eventually leave the home

21 infusion job?

22 A. I did.

23 Q. What was your next position after that?

24 A. I was an authorized nuclear pharmacist

25 for Cardinal Health.

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1 SARAH SIMMERS

2 in Fargo.

3 Q. Did you get a degree from there?

4 A. Yes.

5 Q. What degree?

6 A. I have a doctorate in pharmacy.

7 Q. And how many years did you attend North

8 Dakota State University?

9 A. Six.

10 Q. Did you attend any other schools?

11 A. I did not.

12 Q. Can you tell me a little bit about your

13 work history after leaving or getting your

14 degree at North Dakota State?

15 A. Work history? I've worked in various

16 hospitals, clinics, corporate pharmacy

17 predominantly.

18 Q. What was your first position after you

19 left North Dakota State?

20 A. I was a hospital pharmacist at North

21 Memorial in Robbinsdale, Minnesota.

22 Q. And what did that entail, generally

23 speaking?

24 A. Hospital pharmacy, order entry. You

25 were a reference for physicians in the hospital

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1 SARAH SIMMERS

2 Q. What did that job entail?

3 A. Preparing radio nucleotides for the

4 hospital.

5 Q. Can you explain what that means at a

6 very high level?

7 A. Radio nucleotides are used in

8 diagnostics, and we basically follow the body.

9 We don't make any changes to the body. It's for

10 imaging for physicians to see how well the organ

11 systems are operating and working.

12 Q. Is this a line -- is that -- excuse me.

13 Strike that.

14 Was this a -- did you study at North

15 Dakota State University for this line of work

16 that you were doing?

17 A. No. Cardinal Health partners with a

18 training program through the University of New

19 Mexico to provide on the job to do the training

20 that's required to be an ANP.

21 Q. And what was your next position after

22 that?

23 A. When I left Cardinal? Actually -- I

24 actually worked still per diem for Cardinal and

25 went to work for a clinical -- excuse me -- a

<p style="text-align: right;">Page 18</p> <p>1 SARAH SIMMERS</p> <p>2 clinic pharmacy for Innovis, Innovis Health.</p> <p>3 Q. Would you spell Innovis, please?</p> <p>4 A. I-N-N-O-V-I-S.</p> <p>5 Q. And what was your -- what did your job</p> <p>6 entail at Innovis Health?</p> <p>7 A. I was the clinic pharmacist retail --</p> <p>8 more of a retail model dispensing prescriptions</p> <p>9 within the clinic for the primary care doctors.</p> <p>10 Q. And did you eventually leave that</p> <p>11 position at Innovis?</p> <p>12 A. I did.</p> <p>13 Q. What was your next position after that?</p> <p>14 A. I moved to Arizona and opened a</p> <p>15 compounding pharmacy.</p> <p>16 Q. Tell me what is a compounding pharmacy.</p> <p>17 A. A compounding pharmacy is where we make</p> <p>18 patients' prescriptions pursuant to a doctor's</p> <p>19 formulation that we work together on for a</p> <p>20 patient. It's customized to the patients.</p> <p>21 Q. What was the -- what is the name or</p> <p>22 what was the name of the pharmacy in Arizona?</p> <p>23 A. Customceutical Compounding.</p> <p>24 Q. And do you recall what year you</p> <p>25 established this pharmacy?</p>	<p style="text-align: right;">Page 19</p> <p>1 SARAH SIMMERS</p> <p>2 A. 2010, I believe. I believe my</p> <p>3 operating agreement is 2010, yes, I believe.</p> <p>4 Q. And are you -- well, it is</p> <p>5 Customceutical; is that correct?</p> <p>6 A. Customceutical.</p> <p>7 Q. Customceutical. Are you an owner of</p> <p>8 Customceutical?</p> <p>9 A. I am.</p> <p>10 Q. And are there any other owners?</p> <p>11 A. Yes.</p> <p>12 Q. Who are the other owners?</p> <p>13 A. James Birch.</p> <p>14 Q. And has he been an owner since 2010?</p> <p>15 A. Yes.</p> <p>16 Q. For Customceutical, do you -- does --</p> <p>17 do you operate in a retail space or how does --</p> <p>18 how do you dispense the products that you make?</p> <p>19 A. Customceutical is a retail pharmacy,</p> <p>20 yes. We dispense the prescriptions to the</p> <p>21 patient. We also did do some injectables to</p> <p>22 providers, but they were all patient-specific.</p> <p>23 Q. And can you just briefly explain the</p> <p>24 process for how you might produce a specific</p> <p>25 product? For example, does the doctor make a</p>
<p style="text-align: right;">Page 20</p> <p>1 SARAH SIMMERS</p> <p>2 request and then you fill the request?</p> <p>3 A. The doctor writes a prescription, yes,</p> <p>4 and we fulfill the prescription.</p> <p>5 Q. And is -- and you may have said this,</p> <p>6 and forgive me if I'm asking you again. Is</p> <p>7 Customceutical still operating?</p> <p>8 A. It is not.</p> <p>9 Q. Okay. When did it stop operating?</p> <p>10 A. November 4th of 2020.</p> <p>11 Q. Is there any reason that it stopped</p> <p>12 operating?</p> <p>13 A. Yes. It was -- we weren't making it</p> <p>14 because of the pandemic.</p> <p>15 Q. Besides Custom -- Customceutical, did</p> <p>16 you have any other work -- did you work at any</p> <p>17 other pharmacies or entities?</p> <p>18 A. Yes.</p> <p>19 Q. Can you tell me about those, please?</p> <p>20 A. I also am an owner in Scottsdale</p> <p>21 Professional Pharmacy.</p> <p>22 Q. Okay. What is Scottsdale Professional</p> <p>23 Pharmacy?</p> <p>24 A. Scottsdale Professional Pharmacy is a</p> <p>25 nonsterile compounding pharmacy.</p>	<p style="text-align: right;">Page 21</p> <p>1 SARAH SIMMERS</p> <p>2 Q. And what does a nonsterile -- what is a</p> <p>3 nonsterile compounding pharmacy?</p> <p>4 A. We make customized prescriptions</p> <p>5 pursuant to a prescription from a doctor</p> <p>6 specific for certain patients. This is</p> <p>7 noncommercial products. We make them, in</p> <p>8 essence.</p> <p>9 Q. How is -- how is the non -- how is the</p> <p>10 product that you produce at Scottsdale</p> <p>11 Professional different from what you produce</p> <p>12 with Customceutical?</p> <p>13 A. Customceutical was largely sterile</p> <p>14 products. Scottsdale Professional Pharmacy --</p> <p>15 and we do business as Customedico -- was</p> <p>16 nonsterile.</p> <p>17 Q. For a nonpharmacist, what's the</p> <p>18 difference between sterile and nonsterile?</p> <p>19 A. Sterile you inject; nonsterile, you</p> <p>20 don't.</p> <p>21 Q. Great. Thank you. Now, I know that.</p> <p>22 Okay. So you are an owner of</p> <p>23 Scottsdale Professional Pharmacy, and are there</p> <p>24 any other owners?</p> <p>25 A. There is not.</p>

<p style="text-align: right;">Page 22</p> <p>1 SARAH SIMMERS</p> <p>2 Q. Do you recall about the time that you</p> <p>3 established Scottsdale?</p> <p>4 A. January 10th, 2017.</p> <p>5 Q. And I believe you said that Scottsdale</p> <p>6 Professional Pharmacy is doing business as</p> <p>7 Customedico; is that correct?</p> <p>8 A. That is correct.</p> <p>9 Q. And is it still in business?</p> <p>10 A. It is still in business, yes, sir.</p> <p>11 Q. Do you have any other -- are you an</p> <p>12 owner of any other businesses in the pharmacy</p> <p>13 industry?</p> <p>14 A. I am not.</p> <p>15 Q. Do you know what First Choice Pharmacy</p> <p>16 is?</p> <p>17 A. Yes. I -- so yes, I -- I'm sorry. In</p> <p>18 December, we opened First Choice Pharmacy next</p> <p>19 door to Customedico.</p> <p>20 Q. Okay. And you said -- when you said</p> <p>21 when "we opened," who were you referring to?</p> <p>22 A. Myself, Lee Ori and an entity called</p> <p>23 Pharm Barn.</p> <p>24 Q. The entity was Pharm Barn?</p> <p>25 A. Um-hum.</p>	<p style="text-align: right;">Page 23</p> <p>1 SARAH SIMMERS</p> <p>2 Q. And what -- are you -- strike that.</p> <p>3 What percentage of First Choice</p> <p>4 Pharmacy do you own?</p> <p>5 A. 20 percent.</p> <p>6 Q. And is that in -- ownership in your</p> <p>7 name or is it an LLC?</p> <p>8 A. It's in my name.</p> <p>9 Q. And what percentage does Pharm Barn</p> <p>10 own?</p> <p>11 A. 60.</p> <p>12 Q. And Mr. Ori, Lee Ori owns the other</p> <p>13 20 percent; is that correct?</p> <p>14 A. Yes, sir. But that was my mistake.</p> <p>15 I'm sorry. I do have ownership in First Choice.</p> <p>16 I'm just not thinking. I'm sorry.</p> <p>17 Q. No problem. No problem. That's why we</p> <p>18 ask the questions. It's okay.</p> <p>19 Does -- so -- strike that.</p> <p>20 Does Customedico own -- strike that.</p> <p>21 Is there any relationship between</p> <p>22 Customedico and First Choice besides your</p> <p>23 ownership stake?</p> <p>24 A. Customedico has no stake in First</p> <p>25 Choice Pharmacy or vice versa.</p>
<p style="text-align: right;">Page 24</p> <p>1 SARAH SIMMERS</p> <p>2 Q. Does First Choice do business with</p> <p>3 Customedico?</p> <p>4 A. It does not. They're separate</p> <p>5 entities.</p> <p>6 Q. And is First Choice just a retail</p> <p>7 pharmacy?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Does it specialize in any sense for --</p> <p>10 A. Injured workers. It's work comp,</p> <p>11 Workman's Comp.</p> <p>12 MR. KORANTENG: Sarah, would you wait</p> <p>13 until he's asked his question? Until he has</p> <p>14 fully asked his question, I think you kind of --</p> <p>15 THE WITNESS: Oh, I apologize.</p> <p>16 MR. KORANTENG: That's okay.</p> <p>17 BY MR. PENN:</p> <p>18 Q. Okay. Are you an owner -- strike that.</p> <p>19 Can you tell me what is Foxhole</p> <p>20 Medical, LLC?</p> <p>21 A. Foxhole Medical, LLC is an LLC that I</p> <p>22 work with with Lee Ori.</p> <p>23 Q. And when was it formed?</p> <p>24 A. We formed Foxhole in 2018.</p> <p>25 Q. And why did you form Foxhole?</p>	<p style="text-align: right;">Page 25</p> <p>1 SARAH SIMMERS</p> <p>2 A. We started doing some pharmacy</p> <p>3 consulting as Foxhole.</p> <p>4 Q. And when you say "pharmacy consulting,"</p> <p>5 what does that mean?</p> <p>6 A. We were approached to help another</p> <p>7 pharmacy entity with programs, so we formed an</p> <p>8 LLC to help them with pharmacy programs.</p> <p>9 Q. Just stepping back a moment, are you</p> <p>10 currently -- you're currently a licensed</p> <p>11 pharmacist, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And what states are you licensed in?</p> <p>14 A. I'm licensed in Arizona, I'm licensed</p> <p>15 in Minnesota, and I have a PIC license in Iowa,</p> <p>16 and I had been licensed in Oklahoma.</p> <p>17 Q. Okay. So you said that Foxhole was</p> <p>18 formed to do pharmacy consulting. Who formed</p> <p>19 Foxhole?</p> <p>20 A. Can you repeat that? I heard -- the</p> <p>21 air just kicked on.</p> <p>22 Q. Yes. Who formed Foxhole?</p> <p>23 A. I and Lee did.</p> <p>24 Q. And are you and Mr. Ori its only</p> <p>25 members?</p>

<p style="text-align: right;">Page 26</p> <p>1 SARAH SIMMERS</p> <p>2 A. Lee Ori and I are the only members of</p> <p>3 Foxhole, yes, sir.</p> <p>4 Q. Okay. And who is Lee Ori?</p> <p>5 A. Lee Ori is my business partner in</p> <p>6 Foxhole, he is my business partner in Epicure</p> <p>7 Medical, and he does some management --</p> <p>8 management agreement with Scottsdale</p> <p>9 Professional.</p> <p>10 Q. What -- how did you -- how do you know</p> <p>11 Mr. Ori? When did you meet?</p> <p>12 A. I met Lee at a pharmacy conference.</p> <p>13 Q. Do you know around when?</p> <p>14 A. 2013, 2014, around then.</p> <p>15 Q. Okay. You said that Mr. Ori is</p> <p>16 involved -- has a management position at</p> <p>17 Customedico; is that correct?</p> <p>18 A. He does business -- some business</p> <p>19 investment, correct.</p> <p>20 Q. Is he an employee?</p> <p>21 A. He is not an employee.</p> <p>22 Q. Going back to Foxhole, can you tell me</p> <p>23 its members? Who are the managers of Foxhole?</p> <p>24 A. Both Lee and myself.</p> <p>25 Q. Does Foxhole generate any revenue?</p>	<p style="text-align: right;">Page 27</p> <p>1 SARAH SIMMERS</p> <p>2 A. While we were doing consulting, it did.</p> <p>3 Since the pandemic, I -- we haven't done as much</p> <p>4 of it.</p> <p>5 Q. Did Foxhole engage in any other -- any</p> <p>6 other business besides consulting?</p> <p>7 A. Yes.</p> <p>8 Q. What was that?</p> <p>9 A. In 2019, we started doing contract CBD</p> <p>10 out of Foxhole.</p> <p>11 Q. When you say "contract CBD," what does</p> <p>12 that mean?</p> <p>13 A. We engaged with a manufacturer,</p> <p>14 developed formulas and were doing some white</p> <p>15 labeling contract distribution of CBD.</p> <p>16 Q. And is Foxhole still contracting in</p> <p>17 CBDs?</p> <p>18 A. Not -- no, because of the pandemic.</p> <p>19 Q. When -- when, if you recall, when did</p> <p>20 Foxhole stop taking in revenue?</p> <p>21 A. I don't -- I'm not sure. I'm really</p> <p>22 not.</p> <p>23 Q. Have you done -- do you recall the last</p> <p>24 time you did any consulting under Foxhole's</p> <p>25 name?</p>
<p style="text-align: right;">Page 28</p> <p>1 SARAH SIMMERS</p> <p>2 A. 2020. To my best recollection, it'd be</p> <p>3 2020.</p> <p>4 Q. Okay. Thank you.</p> <p>5 Does Foxhole have any employees?</p> <p>6 A. It does not.</p> <p>7 Q. Does Foxhole have independent</p> <p>8 contractors?</p> <p>9 A. Yes.</p> <p>10 Q. Do you recall who those contractors</p> <p>11 are?</p> <p>12 A. We had Dan Reilly as an independent</p> <p>13 contractor when we started doing the CBD.</p> <p>14 Q. And who was Mr. -- who is Dan Reilly?</p> <p>15 A. Dan Reilly is an associate or a</p> <p>16 business relationship of Lee's from the Saint --</p> <p>17 in St. Louis.</p> <p>18 Q. Did you meet Mr. Reilly through his</p> <p>19 Foxhole engagement?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And what did Dan Reilly do for Foxhole?</p> <p>22 A. Dan had a background in promotional</p> <p>23 products. We were trying to engage his</p> <p>24 relationships to sell CBD.</p> <p>25 Q. About how long did you end up working</p>	<p style="text-align: right;">Page 29</p> <p>1 SARAH SIMMERS</p> <p>2 with Dan Reilly in the Foxhole entity?</p> <p>3 A. Can you say that again?</p> <p>4 Q. Sure. How long did Foxhole work with</p> <p>5 Dan Reilly?</p> <p>6 A. In the CBD space, most of 2019, from my</p> <p>7 best recollection.</p> <p>8 Q. When you were developing the CBD</p> <p>9 products, I guess, with Foxhole, would you say</p> <p>10 Dan Reilly was mostly involved on finding</p> <p>11 customers? Is that -- is that a fair</p> <p>12 characterization?</p> <p>13 A. Dan did some infrastructure stuff for</p> <p>14 us, but it was mostly sales.</p> <p>15 Q. And in -- and what was your role</p> <p>16 primarily with respect to the CBD sales?</p> <p>17 A. Branding and formulating.</p> <p>18 Q. And what was Mr. Ori's role primarily?</p> <p>19 A. Business development, contracting. He</p> <p>20 worked directly usually with the contract</p> <p>21 manufacturers.</p> <p>22 Q. When -- just getting back to the</p> <p>23 Foxhole itself, when you established it, how was</p> <p>24 the company capitalized?</p> <p>25 MR. KORANTENG: Objection. Objection</p>

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1 SARAH SIMMERS
2 to the form of the question. It's vague as it
3 asks specifically what capitalization means.
4 MR. PENN: Actually, let me withdraw
5 the question.
6 BY MR. PENN:
7 Q. Was -- when you established Foxhole,
8 was it capitalized?
9 MR. KORANTENG: Objection again as to
10 what "capitalization" means. I think it's
11 vague.
12 BY MR. PENN:
13 Q. You can answer the question if you
14 know.
15 A. When we formed Foxhole, we -- as far as
16 capitalizing it, we had a lot of meetings around
17 putting the programs together, so I know I had
18 expenses and dinners and meetings meeting Lee.
19 As far as money in to the business, it was a
20 fee-for-service business. I didn't need -- we
21 didn't need a lot of capital to engage with the
22 customer and what we knew in the programs. So I
23 had investment in it as far as when we would
24 meet, but physically putting in money was mostly
25 that or -- and our time.

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1 SARAH SIMMERS
2 A. No.
3 Q. You said that the CBD venture was on
4 pause. Can you venture a guess about how you
5 will determine when to try to restart that
6 venture?
7 A. I can't. I'm too committed to other
8 places.
9 Q. By "committed to other places," how --
10 what do you mean?
11 A. I'm busy in the pharmacy space, too
12 busy in the pharmacy space.
13 Q. Okay. I'm going to try to show you a
14 document here. I will be trying to share my
15 screen. We'll see how that goes first time
16 round. I'm also going to be putting the
17 document into the chat. So you'll have sort of
18 two options to view it.
19 Most -- most of these exhibits, I think
20 it will be easy enough for you to view the
21 portion I'm sharing on the screen, but you also
22 have the option to look into the chat and
23 download the document to your computer and to
24 review it there.
25 Most of these documents are going to be

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1 SARAH SIMMERS
2 Q. When you say "not physically putting in
3 money was mostly that," what --
4 A. Well, I mean, it was our expenses that
5 we incurred putting the programs together that
6 we were contracted to do. I didn't go out --
7 what I'm saying is I didn't go out and get a
8 loan to do what I needed to capitalize Foxhole
9 is what I'm saying.
10 Q. Okay.
11 A. It had minimal expenses to start the
12 company, to put programs together for the
13 customer.
14 Q. Okay. And what is Foxhole's current
15 status?
16 A. Well, we have the CBD on pause because
17 of the pandemic. I would love to start that
18 again. Just trying to gauge marketplace. So we
19 currently are just waiting to see if we can do
20 any further CBD sales out of it or not. I don't
21 know. It's on pause.
22 Q. And have you sold any part of the
23 company?
24 A. Have I sold any part of Foxhole?
25 Q. Correct.

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1 SARAH SIMMERS
2 relatively short, but if at any time you feel
3 like you need to read the complete document or
4 you want to do more or you need more time to
5 finish reading it, just please let me know.
6 A. Okay.
7 Q. Okay.
8 MR. KORANTENG: Are you planning to use
9 the exhibits that have already been marked?
10 MR. PENN: You know, I'm not. There
11 will be some repeats, but I'm just doing a whole
12 new set.
13 (Simmers Exhibit 1 was marked
14 for ID.)
15 BY MR. PENN:
16 Q. Okay. Can you see the document on the
17 share screen?
18 A. I can.
19 Q. Do you recognize this document?
20 A. I do.
21 Q. What is it?
22 A. It is our Operating Agreement for
23 Foxhole, Foxhole Medical.
24 Q. Okay. Let me show you -- sorry. Let
25 me back up and say I'd like to introduce this as

<p>Page 34</p> <p>1 SARAH SIMMERS</p> <p>2 Defendant's Exhibit 1. The document's</p> <p>3 identified as DEF3744 through DEF393793, and</p> <p>4 this was a document produced by your counsel.</p> <p>5 And on this page you can see -- can you</p> <p>6 see the signatures at the bottom?</p> <p>7 A. Can you slide it up? I can't see the</p> <p>8 whole page.</p> <p>9 Q. Yes. (Complying.)</p> <p>10 A. (Reviewing document.)</p> <p>11 Q. Okay. How's that?</p> <p>12 A. Perfect.</p> <p>13 Q. Okay. And do you see your signature</p> <p>14 listed as a member?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And do you see your signature listed</p> <p>17 under manager?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And who was the other member from</p> <p>20 Foxhole that's there?</p> <p>21 A. Lee Ori.</p> <p>22 Q. Okay. And do you see his signature on</p> <p>23 this document?</p> <p>24 A. I do.</p> <p>25 Q. And is Lee Ori also listed as a manager</p>	<p>Page 35</p> <p>1 SARAH SIMMERS</p> <p>2 on this document?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Moving to the next page, this is</p> <p>5 Schedule A, and it lists capital contributions.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. It indicates that -- it says Sarah</p> <p>9 Simmers made -- it said "Sarah Simmers," and</p> <p>10 next to that it says "capital contribution,</p> <p>11 \$500." Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. The next column says "membership</p> <p>14 interest, 50 percent." Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. It also says Mr. Ori -- strike that.</p> <p>17 Mr. Ori is also listed as a member, and</p> <p>18 next to his name it says that the \$500</p> <p>19 contribution. Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. Do you recall, did you actually deposit</p> <p>22 \$500 into Foxhole?</p> <p>23 A. I did not.</p> <p>24 Q. Do you know if Lee Ori deposited \$500</p> <p>25 into Foxhole?</p>
<p>Page 36</p> <p>1 SARAH SIMMERS</p> <p>2 MR. KORANTENG: Objection.</p> <p>3 THE WITNESS: He did not.</p> <p>4 MR. KORANTENG: Objection. The</p> <p>5 question is vague.</p> <p>6 THE WITNESS: What I do know is we both</p> <p>7 incurred expenses setting up the programs in</p> <p>8 between meetings, office supplies, et cetera. I</p> <p>9 don't know -- I don't know beyond that if he</p> <p>10 deposited \$500 into the checking.</p> <p>11 BY MR. PENN:</p> <p>12 Q. Okay. And did you establish a checking</p> <p>13 account for -- or a bank account for Foxhole?</p> <p>14 A. Yes.</p> <p>15 Q. All right. I'm going to show you</p> <p>16 another page. This is -- directing your</p> <p>17 attention to Article VII of the agreement. It's</p> <p>18 the "Management."</p> <p>19 Subsection a, the first sentence -- the</p> <p>20 first two sentences say "Management of company.</p> <p>21 All of the business and affairs of the company</p> <p>22 shall be managed by a board of managers. The</p> <p>23 board of managers shall consist of two managers</p> <p>24 who may not be members of the company. The</p> <p>25 initial manager shall be, 1, Lee Ori, and, 2,</p>	<p>Page 37</p> <p>1 SARAH SIMMERS</p> <p>2 Sarah Simmers."</p> <p>3 Do you see that in the agreement?</p> <p>4 A. I do.</p> <p>5 Q. It says Lee Ori and Sarah Simmers are</p> <p>6 the initial managers. Is that accurate?</p> <p>7 A. Yes.</p> <p>8 Q. Were there any other managers?</p> <p>9 A. No.</p> <p>10 Q. And you were the only -- I think you</p> <p>11 already testified that you and Mr. Ori were the</p> <p>12 only members; is that correct?</p> <p>13 A. Correct.</p> <p>14 MR. PENN: I have a next exhibit that</p> <p>15 I'd like to mark as Exhibit 2.</p> <p>16 (Simmers Exhibit 2 was marked</p> <p>17 for ID.)</p> <p>18 BY MR. PENN:</p> <p>19 Q. This is Bates stamped DEF0031. Can you</p> <p>20 see the document on your screen, Miss Simmers?</p> <p>21 A. I can.</p> <p>22 Q. You cannot?</p> <p>23 A. I can, yes, sir.</p> <p>24 Q. Oh, okay. Do you recognize this</p> <p>25 document?</p>

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1 SARAH SIMMERS

2 A. Yeah. It's the Carrollton. It's our

3 bank account document.

4 Q. And is it the bank account document for

5 Foxhole?

6 A. The writing is so small. Yes, it's for

7 Foxhole. There we go. Yes.

8 Q. Just to remind you, if at any time you

9 can't see it or it's too small, just let me know

10 because, you know, I can't quite tell what it

11 always looks like on your end, so just feel free

12 to let me know.

13 A. Okay.

14 Q. Just drawing your attention to the

15 highlighted section, it shows that there's a --

16 there was an initial deposit of zero dollars.

17 Do you see that?

18 A. I do.

19 Q. Scrolling down, do you see your

20 signature on this document?

21 A. I do.

22 Q. You indicated -- strike that.

23 Did you ever invest capital into

24 Foxhole?

25 MR. KORANTENG: Objection. It's been

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1 SARAH SIMMERS

2 A. Epicure was in March, March of 20 --

3 oh, gee. The pandemic years all run together

4 for me. It's one big year.

5 Lee formed it in March of 2020, I

6 believe.

7 Q. And why was Epicure formed?

8 A. Epicure was formed to do contract --

9 contract manufacturing of products. Initially,

10 it was for sanitizer. We had other products

11 that Dan was working on with some masks and some

12 other pandemic products through Epicure.

13 Q. Who are Epicure's members?

14 A. Epicure's members are -- the members

15 are two companies. It's PFL Investments and

16 then Dan's company. I don't recall the name of

17 his company, but he has a company in there

18 that's the member.

19 Q. Okay. Do you know what percentage each

20 company holds in Epicure?

21 A. I -- I believe it's -- I think it's

22 60/40.

23 Q. Okay.

24 A. I actually don't recall. I believe

25 it's 60/40. I -- but I'm not recalling.

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1 SARAH SIMMERS

2 asked and answered.

3 BY MR. PENN:

4 Q. You can answer the question, if you

5 can.

6 A. You are asking me if I have invested

7 any money in Foxhole? Personally, just in

8 meetings, what it cost us when we met, office

9 supplies, things we were doing to put the

10 programs together, yes, I have made those

11 investments. It's not -- I did not write a

12 check into the checking account and make a

13 capital contribution that way, no.

14 Q. Okay. Thank you.

15 MR. PENN: How long have we been going?

16 How are you on time? Do you need a break at

17 all, Miss Simmers?

18 THE WITNESS: Nope.

19 MR. PENN: Okay.

20 BY MR. PENN:

21 Q. Let's talk a little bit about Epicure.

22 What is Epicure Medical?

23 A. Epicure Medical is a company that I

24 formed with Dan and Lee.

25 Q. And when was it formed?

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1 SARAH SIMMERS

2 Q. Okay. You said one of the companies is

3 PFL Investments.

4 A. Um-hum.

5 Q. Is that an LLC?

6 A. Yes, sir.

7 Q. Who are PFL's members?

8 A. Lee Ori and myself.

9 Q. And who are PFL's managers?

10 A. Lee Ori and myself.

11 Q. When -- when did you establish PFL

12 Investments?

13 A. 2020, I believe.

14 Q. And what is PFL's purpose?

15 A. We established PFL, Lee and I did, to

16 work with -- I guess I would say ServeRx as a

17 company. Trying to decide. I couldn't recall

18 who -- which company we signed the agreement

19 with.

20 Q. Could you say the name of the company

21 again, please?

22 A. Yeah, I believe -- I need to look at

23 who we signed the agreement with, but we were

24 doing some work, pharmacy work. It was a

25 pharmacy related initially, yes.

<p style="text-align: right;">Page 42</p> <p>1 SARAH SIMMERS</p> <p>2 Q. And what type of -- generally, what</p> <p>3 type of work were you doing with the entity?</p> <p>4 Was it consulting also?</p> <p>5 A. (Nodding.) Yes, sir. I'm sorry. I</p> <p>6 forgot. I'm sorry. That was a nodded yes.</p> <p>7 Q. Did PFL generate any income?</p> <p>8 A. Yes, I believe so.</p> <p>9 Q. Do you recall what source the income</p> <p>10 was from?</p> <p>11 A. The consulting that we were doing.</p> <p>12 Q. Were you doing the consulting in --</p> <p>13 strike that.</p> <p>14 You said that you established PFL in</p> <p>15 2000, and do you recall when in 2000 you were</p> <p>16 doing this consulting?</p> <p>17 MR. KORANTENG: Objection, misstates</p> <p>18 her testimony.</p> <p>19 BY MR. PENN:</p> <p>20 Q. You can answer if you know.</p> <p>21 A. I want to say latter half of the year,</p> <p>22 and that's as far as engaging the client, like,</p> <p>23 talking to the client was the latter half of</p> <p>24 2020.</p> <p>25 Q. And did you do -- did PFL do any -- or</p>	<p style="text-align: right;">Page 43</p> <p>1 SARAH SIMMERS</p> <p>2 strike that.</p> <p>3 Did you continue to engage in</p> <p>4 consulting through PFL after 2020?</p> <p>5 A. Yes.</p> <p>6 Q. And did PFL continue to generate income</p> <p>7 after 2020?</p> <p>8 A. Yes.</p> <p>9 Q. And do you still operate PFL today?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Do you know if Lee Ori was involved in</p> <p>12 any of the consulting work for PFL?</p> <p>13 A. He absolutely was.</p> <p>14 Q. What was his role?</p> <p>15 A. We were consulting -- I did more of the</p> <p>16 operations, and he did more of the business,</p> <p>17 contracting and operated the business side of</p> <p>18 it. I did more the operations side.</p> <p>19 Q. And can you describe the type of</p> <p>20 consulting you were doing with PFL?</p> <p>21 A. Absolutely. It was in preparation for</p> <p>22 opening First Choice Pharmacy.</p> <p>23 Q. So did PFL contract with First Choice</p> <p>24 to provide services?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 44</p> <p>1 SARAH SIMMERS</p> <p>2 Q. What type of preparation were you doing</p> <p>3 for opening First Choice?</p> <p>4 A. A buildout of a space. Lee did a lot</p> <p>5 of the work with the contractor for the</p> <p>6 buildout. So that was city planning and things</p> <p>7 like that.</p> <p>8 I was doing more of the SOPs, SOP work</p> <p>9 for pharmacy, standard operating procedures.</p> <p>10 The licensure was my responsibility. That's</p> <p>11 predominantly what we were doing in there. Some</p> <p>12 program work, setting up the program stuff too.</p> <p>13 Q. Did PFL receive payment for these</p> <p>14 services?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Who was the client making payments?</p> <p>17 A. I can't remember the name of the entity</p> <p>18 that we -- that they were using.</p> <p>19 Q. When --</p> <p>20 A. I'd have to look. I'd have to look at</p> <p>21 who we signed the contract with. I don't</p> <p>22 remember.</p> <p>23 Q. Just so I understand, the relationship</p> <p>24 between PFL and First Choice, so PFL was</p> <p>25 providing these services --</p>	<p style="text-align: right;">Page 45</p> <p>1 SARAH SIMMERS</p> <p>2 A. Yeah, it's pharmacy -- it's kind of</p> <p>3 some pharmacy management service that would</p> <p>4 probably make the most sense to you. Having</p> <p>5 been pharmacists and in the industry, it's</p> <p>6 pharm -- it's running a pharmacy.</p> <p>7 Q. Okay. Turning back to Epicure, do you</p> <p>8 recall if Epicure was capitalized when you</p> <p>9 formed the company?</p> <p>10 A. Yes. I believe we had a large deposit</p> <p>11 from a sanitizer sale. It was a customer</p> <p>12 deposit I believe is the -- I believe is how we</p> <p>13 capitalized Epicure.</p> <p>14 Q. Did you -- were there any other capital</p> <p>15 contributions to Epicure when you established</p> <p>16 the company?</p> <p>17 A. Just what we put in individually in</p> <p>18 re- -- you know, with receipts in our meeting</p> <p>19 and getting prepared. We had -- we had personal</p> <p>20 expenses that we -- it would be a capital</p> <p>21 contribution to Epicure, yes. Each of us</p> <p>22 individually did. I don't -- I don't know how</p> <p>23 much each -- everyone's receipts were, but yes,</p> <p>24 that -- that would be from my side for me, I had</p> <p>25 receipts and expenses.</p>

<p style="text-align: right;">Page 46</p> <p>1 SARAH SIMMERS</p> <p>2 Q. Did you have any discussions with</p> <p>3 Mr. Ori or Mr. Reilly about how the</p> <p>4 capitalization should be determined?</p> <p>5 A. Initially?</p> <p>6 Q. Yes, initially.</p> <p>7 A. Yes.</p> <p>8 Q. And what were those discussions?</p> <p>9 A. From my recollection, we talked about</p> <p>10 that they were already out selling, and we would</p> <p>11 have a -- we would have a contri- -- we would</p> <p>12 have a capital in the account from a few sales</p> <p>13 that they had already lined up, essentially.</p> <p>14 That's what my understanding was. And then we</p> <p>15 did have a pretty large deposit when they opened</p> <p>16 the account, that I understood that they were</p> <p>17 already out there selling, trying to line up</p> <p>18 contracts and relationships.</p> <p>19 Q. When you say they were out there</p> <p>20 selling, they were selling hand sanitizer?</p> <p>21 A. Yeah, and I think -- I think we also</p> <p>22 had some masks in place too. There were other</p> <p>23 things besides sanitizer. Sanitizer was the</p> <p>24 fake focus, but I know there was -- I'm pretty</p> <p>25 sure we did a mask deal in there too in the</p>	<p style="text-align: right;">Page 47</p> <p>1 SARAH SIMMERS</p> <p>2 beginning.</p> <p>3 Q. So it sounds like Mr. Ori and -- well,</p> <p>4 strike that.</p> <p>5 It sounds like Epicure was -- strike</p> <p>6 that.</p> <p>7 You said Mr. Ori and Mr. Reilly were</p> <p>8 already out selling; is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. And can you -- do you recall the time</p> <p>11 frame when they began making these sales?</p> <p>12 A. I can't.</p> <p>13 Q. Is it fair to say that they began these</p> <p>14 efforts prior to Epicure's formation?</p> <p>15 A. Yes, it's fair to say that. We -- we</p> <p>16 were -- Epicure was Dan's -- kind of Dan's baby.</p> <p>17 He -- he was starting to work with us, and we</p> <p>18 were setting up channels for CBD as Epicure. So</p> <p>19 that's kind of how we started the Epicure</p> <p>20 conversation originally. Ahead of the pandemic,</p> <p>21 we were talking about CBD, Dan, and reforming</p> <p>22 Epicure to do CBD out of it because Dan was not</p> <p>23 a partner in Foxhole.</p> <p>24 Q. So Epicure -- the early discussions</p> <p>25 about Epicure were for Epicure to go into the</p>
<p style="text-align: right;">Page 48</p> <p>1 SARAH SIMMERS</p> <p>2 CBD business; is that correct?</p> <p>3 A. Correct.</p> <p>4 Q. And those early discussions took place</p> <p>5 in the -- strike that.</p> <p>6 You indicated that those early</p> <p>7 discussions took place before the pandemic; is</p> <p>8 that right?</p> <p>9 A. Yes.</p> <p>10 Q. And can you give an estimate about --</p> <p>11 on the date when you first started having these</p> <p>12 conversations with Dan Reilly?</p> <p>13 A. Yes. Dan started working with us in</p> <p>14 Foxhole in 2019. He was -- we got involved with</p> <p>15 him because we needed his help for sales. Once</p> <p>16 things were doing pretty well towards the end of</p> <p>17 '19, Dan talked to us about Epicure and asking</p> <p>18 if we could possibly look at a new company with</p> <p>19 him as a partner because he has a lot of sales</p> <p>20 relationships. Dan's lane is sales. He's very</p> <p>21 good at it. So we were talking Epicure as early</p> <p>22 as end of 2019 about CBD and putting that</p> <p>23 together. So he had a lot of ideas there.</p> <p>24 Q. Did there come a point in 2000 when the</p> <p>25 focus of Epicure shifted from CBD to hand</p>	<p style="text-align: right;">Page 49</p> <p>1 SARAH SIMMERS</p> <p>2 sanitizer?</p> <p>3 A. Yes, because Dan was -- Dan was</p> <p>4 engaging customer bases, and his promotional</p> <p>5 customer space is CBD, and they all wanted</p> <p>6 sanitizer instead of CBD. So rather than</p> <p>7 Epicure getting fully formed and going in the</p> <p>8 CBD space, it pivoted because of the</p> <p>9 marketplace.</p> <p>10 Q. You -- I think you indicated that there</p> <p>11 were sales prior to Epicure's formation. Do you</p> <p>12 know on whose behalf those sales were made?</p> <p>13 A. The sales were made on behalf of</p> <p>14 Epicure.</p> <p>15 Q. And that's even though Epicure wasn't</p> <p>16 formed yet; is that correct?</p> <p>17 A. Yeah, they were just scrambling as fast</p> <p>18 as they could to get the documents in place,</p> <p>19 yes, but they went -- Dan was -- that's when he</p> <p>20 was engaging us and pushing to be a partner</p> <p>21 because he has the sales relationships. So we</p> <p>22 had to respect that. So we were just -- Lee was</p> <p>23 working as fast as he could to get the documents</p> <p>24 in place for Epicure.</p> <p>25 Q. You indicated that -- or rather you</p>

<p style="text-align: right;">Page 50</p> <p>1 SARAH SIMMERS</p> <p>2 testified that Epicure -- or strike that.</p> <p>3 You indicated that Epicure was</p> <p>4 initially conceived as a CBD venture but you</p> <p>5 pivoted to hand sanitizer, correct?</p> <p>6 A. Yeah, no CBD was produced as Epicure.</p> <p>7 Q. Okay. You -- you had -- did you have</p> <p>8 any background in producing or selling hand</p> <p>9 sanitizer?</p> <p>10 A. Do I?</p> <p>11 Q. Did you?</p> <p>12 A. Or did we collectively? Are you saying</p> <p>13 we, Epicure, or I, Sarah Simmers?</p> <p>14 Q. We'll start -- let's start with you,</p> <p>15 Sarah Simmers.</p> <p>16 A. I do not have hand sanitizer sales</p> <p>17 experience, no, sir.</p> <p>18 Q. And do you know if Mr. Ori or</p> <p>19 Mr. Reilly had experience selling that -- those</p> <p>20 products, hand sanitizer products?</p> <p>21 A. Not to my knowledge.</p> <p>22 Q. And do you know if Mr. Ori or</p> <p>23 Mr. Reilly had any background in manufacturing</p> <p>24 hand sanitizer products?</p> <p>25 A. Hand sanitizer specifically? Not to my</p>	<p style="text-align: right;">Page 51</p> <p>1 SARAH SIMMERS</p> <p>2 knowledge.</p> <p>3 MR. PENN: I'm going to introduce</p> <p>4 Exhibit 3.</p> <p>5 (Simmers Exhibit 3 was marked</p> <p>6 for ID.)</p> <p>7 BY MR. PENN:</p> <p>8 Q. Okay. Do you recognize this document?</p> <p>9 A. I do.</p> <p>10 Q. And what do you recognize it as?</p> <p>11 A. This is our Epicure Operating</p> <p>12 Agreement.</p> <p>13 Q. Do you see the effective date on this</p> <p>14 document?</p> <p>15 A. I do.</p> <p>16 Q. And what is the effective date?</p> <p>17 A. March 26th, 2020.</p> <p>18 Q. This document was provided by your</p> <p>19 counsel. It's identified as DEF3505 through</p> <p>20 DEF3545. On the screen, can you see what is the</p> <p>21 signature page for this Epicure agreement?</p> <p>22 A. I can.</p> <p>23 Q. Can you dell tell me the entities</p> <p>24 listed under the "members" signature?</p> <p>25 A. PFL Investment LLC and its manager, Lee</p>
<p style="text-align: right;">Page 52</p> <p>1 SARAH SIMMERS</p> <p>2 Ori, and Clover Leaf Strategies LLC, by it's</p> <p>3 manager, Lisa Reilly.</p> <p>4 Q. And you testified about PFL</p> <p>5 Investments. This is the PFL Investments that</p> <p>6 you're a member of, correct?</p> <p>7 A. Correct and manager of, yes.</p> <p>8 Q. And --</p> <p>9 A. I'm a manager of, yes.</p> <p>10 Q. You're a member and a manager, correct?</p> <p>11 A. Correct.</p> <p>12 Q. Correct. And Mr. Ori is a member of</p> <p>13 PFL Investments, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And do you recognize his signature next</p> <p>16 to the member on this section?</p> <p>17 A. Yes, I do.</p> <p>18 Q. The other member listed on this</p> <p>19 document is Clover Leaf Strategies LLC. Do</p> <p>20 you -- do you know what that is?</p> <p>21 A. That is Dan -- Dan's company. That's</p> <p>22 all I know. That's all I know of it.</p> <p>23 Q. Okay. Do you have any -- do you know</p> <p>24 why Lisa Reilly is listed as its manager?</p> <p>25 A. I don't.</p>	<p style="text-align: right;">Page 53</p> <p>1 SARAH SIMMERS</p> <p>2 Q. Okay.</p> <p>3 A. That's Dan's. You'd have to ask Dan.</p> <p>4 Q. Okay. And do you see the signature</p> <p>5 next to the Clover Leaf Strategies?</p> <p>6 A. That's Dan's signature.</p> <p>7 Q. That's Dan's. Okay. Just below that,</p> <p>8 it lists the managers of Epicure. Do you see</p> <p>9 that?</p> <p>10 A. I do.</p> <p>11 Q. And who are the managers listed?</p> <p>12 A. Lee Ori, myself, and Dan Reilly.</p> <p>13 Q. And you see your signature next to your</p> <p>14 name there?</p> <p>15 A. I do.</p> <p>16 Q. Okay. You spoke a little bit about</p> <p>17 your background with Mr. Reilly, this background</p> <p>18 with Mr. Reilly. Are you involved with any</p> <p>19 other ventures with Mr. Reilly?</p> <p>20 A. I am not.</p> <p>21 Q. Moving to the next page, does this</p> <p>22 chart accurately reflect the ownership structure</p> <p>23 of Epicure?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And it looks like it lists PFL</p>

<p style="text-align: right;">Page 54</p> <p>1 SARAH SIMMERS</p> <p>2 Investments as having a 66.6 percent membership</p> <p>3 interest. Is that accurate?</p> <p>4 A. Yeah, that's what I recalled,</p> <p>5 two-thirds/one-third.</p> <p>6 Q. And it says that PFL Investments</p> <p>7 made -- it indicates a capital contribution of</p> <p>8 \$666.66 by PFL Investments. Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Do you know if PFL actually deposited</p> <p>11 \$600.66 --</p> <p>12 A. No, I do not.</p> <p>13 Q. -- into an account with Epicure?</p> <p>14 A. I do not know. I'm not sure if we did</p> <p>15 or not.</p> <p>16 Q. Do you recall how you made -- how you</p> <p>17 determined these the capital contribution</p> <p>18 amounts listed on Schedule A for this document?</p> <p>19 A. All we've ever discussed for capital</p> <p>20 contribution of coming up with that is a nominal</p> <p>21 amount because of expenditures we do personally</p> <p>22 or from the business, not that we wrote a check</p> <p>23 from one to the other.</p> <p>24 Lee and I as PFL had had expenses in</p> <p>25 setting these things up, but not to my knowledge</p>	<p style="text-align: right;">Page 55</p> <p>1 SARAH SIMMERS</p> <p>2 that a specific check of that amount was put</p> <p>3 into the account.</p> <p>4 MR. PENN: Okay, I'd like to introduce</p> <p>5 Exhibit 4.</p> <p>6 (Simmers Exhibit 4 was marked</p> <p>7 for ID.)</p> <p>8 BY MR. PENN:</p> <p>9 Q. This is a document produced by your</p> <p>10 counsel. It's identified at DEF0030. Can you</p> <p>11 see this document okay?</p> <p>12 A. I can, yes.</p> <p>13 Q. Do you recognize it?</p> <p>14 A. Yep. It's the bank setup. It's</p> <p>15 accounting via bank account setup with</p> <p>16 Carrollton.</p> <p>17 Q. And it's the bank account for Epicure</p> <p>18 Medical, correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. This agreement is dated March 27th,</p> <p>21 2020; is that correct?</p> <p>22 A. Yes, it is.</p> <p>23 Q. It indicates an initial deposit of</p> <p>24 \$72,500. Do you see that?</p> <p>25 A. I do.</p>
<p style="text-align: right;">Page 56</p> <p>1 SARAH SIMMERS</p> <p>2 Q. Where did that deposit come from?</p> <p>3 A. I didn't recall this amount, but I knew</p> <p>4 we had a sanitizer deposit from a customer when</p> <p>5 they were out -- when Dan and Lee were working</p> <p>6 to establish sales for Epicure. I remember that</p> <p>7 they had had an initial deposit from a customer</p> <p>8 wanting to procure sanitizer, that that was for</p> <p>9 sanitizer, to my knowledge.</p> <p>10 Q. What was your role -- or strike that.</p> <p>11 Did you have any role in procuring the</p> <p>12 initial sanitizer sales?</p> <p>13 A. I did not. Not directly, no.</p> <p>14 Q. And so you became aware of them by</p> <p>15 Mr. Ori or Mr. Reilly told you about them?</p> <p>16 A. Yeah, we talked daily. We would talk</p> <p>17 on the phone. I was aware of what they were</p> <p>18 doing, yes.</p> <p>19 Q. Did you have any discussions with</p> <p>20 Mr. Ori or Mr. Reilly about making this initial</p> <p>21 deposit?</p> <p>22 A. Just that it was happening. That's</p> <p>23 what I know of it, but they did secure a</p> <p>24 customer, they did -- and the customer was going</p> <p>25 to make a deposit for sanitizer to secure a</p>	<p style="text-align: right;">Page 57</p> <p>1 SARAH SIMMERS</p> <p>2 certain amount. I don't know how many units</p> <p>3 this was for, but I just knew of it.</p> <p>4 Q. Did you have any Mr. Ori or Mr. Reilly</p> <p>5 about what the initial capital contributions</p> <p>6 should be?</p> <p>7 MR. KORANTENG: Objection, asked and</p> <p>8 answered.</p> <p>9 BY MR. PENN:</p> <p>10 Q. You can answer, if you know.</p> <p>11 A. You're asking me if I had any</p> <p>12 discussions on what I think it should be?</p> <p>13 Q. I'm asking if you had any conversations</p> <p>14 with Mr. Ori or Mr. Reilly about what the</p> <p>15 initial capital contribution to Epicure should</p> <p>16 have been.</p> <p>17 A. I don't recall, no.</p> <p>18 Q. Did -- was there any further capital</p> <p>19 contributed to Epicure?</p> <p>20 A. I believe a mask -- I believe there was</p> <p>21 a mask sale going on at the same time. I</p> <p>22 believe that there was a mask sale going on,</p> <p>23 yes. I don't know -- it was around the same</p> <p>24 time. I couldn't give you an exact date, but I</p> <p>25 know they were -- and that was with Dallas, I</p>

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1 SARAH SIMMERS
2 think. So I think there was a mask deal, yes.
3 Q. At this time when you were setting up
4 Epicure, do you recall that any budgets for
5 Epicure's business was created?
6 A. I know Dan and Lee worked on some
7 pro formas, but that's -- I know they were
8 working on pro formas based on the customers
9 that Dan was speaking with. That's as much as I
10 know of it, but if there were budgets
11 specifically as award a budget, no.
12 Q. Are you aware of any projections about
13 Epicure's business?
14 A. Can you repeat that?
15 Q. Sure. Let me try to rephrase it.
16 When Epicure was thinking of going into
17 the hand sanitizer business, did you have any
18 projections for -- any sales projections?
19 A. Well, that's the pro forma that Dan and
20 Lee were working on. I know that they were
21 actively doing that, trying to -- trying to
22 establish, because there was more business than
23 they knew what to do with, and they were trying
24 to put -- wrap their heads around it. That was
25 the quick pivot out of CBD.

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1 SARAH SIMMERS
2 A. Yes.
3 Q. On these daily phone calls, did you
4 only speak about Epicure business with Mr. Ori
5 and Mr. Reilly?
6 A. Yes.
7 Q. So there were no conversations with
8 Mr. Ori about PFL Investments; is that correct?
9 A. Well, when Dan was on the phone,
10 because you're talking about Epicure, yeah, we
11 didn't talk about anything but Epicure. It was
12 very consuming for them at the time.
13 Q. In these regular board of manager
14 meetings, what items did you discuss?
15 A. Initially sales, procurements, what Lee
16 was trying to do to supply the customer. They
17 asked me to -- I worked a lot initially on the
18 website. So that would be copy branding. I
19 worked with ish Marketing to help get our
20 marketing pieces together. I did a lot of that.
21 Initially, when I started, it was
22 mostly -- mostly -- mostly website and branding
23 probably. So I was trying to get marketing
24 materials together so as they would meet with
25 these customers, they had something to present.

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1 SARAH SIMMERS
2 Q. Did you have discussions about them,
3 about these pro formas with them?
4 A. Yes. We talked on the phone about it.
5 I was aware that they were busy doing it and
6 doing a lot of conversations with different
7 customers and engaging salespeople that Dan had
8 relationships with, yes.
9 Q. Okay. You -- you had just said -- you
10 said -- strike that.
11 Did Epicure's board of managers have
12 regular meetings?
13 A. Yeah, we -- because of the pandemic and
14 you -- we had a lot of stay-at-home orders. We
15 did a lot of stuff on the phone, almost a
16 hundred percent on the phone.
17 I did go to St. Louis once, but --
18 where we met face-to-face and did kind of a
19 top-to-down meeting. So we met regularly either
20 via phone most often. We didn't Zoom very
21 often. It was mostly phone.
22 Q. And -- and -- strike that.
23 I'm not -- it wasn't clear from your
24 answer to me. Did you have regular -- did the
25 board of managers have formal meetings?

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1 SARAH SIMMERS
2 And Lee was working on procurement and pricing.
3 Those were a lot of the content of the calls.
4 If I had the marketing stuff done, they wanted
5 to proof it, look at it, because they had to
6 present what I was working on with Trish.
7 Q. Okay. I just want to go back quickly.
8 You mentioned Mr. Ori and Dan Reilly were
9 working on pro formas. Did you see those
10 pro formas?
11 A. I don't recall. Like -- we talked a
12 lot about them, but because so much of them were
13 on the phone because of the pandemic, I just
14 don't remember -- I don't remember. I know we
15 talked about them on the phone, but I don't
16 remember if I eyeballed any of them because,
17 like I said, most of it was from home.
18 MR. PENN: This is a question for
19 Fibbens. Fibbens, do you know if these
20 pro formas were produced?
21 MR. KORANTENG: So I produced
22 everything that we received. I don't recall
23 specifically. As long as they -- if they
24 existed and haven't been provided, I will gather
25 them and send them to you.

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1 SARAH SIMMERS

2 MR. PENN: Okay, yeah. Will you check

3 that? I'll check on my end too, but I don't

4 recall seeing them.

5 Okay. I think now is a good time for a

6 break.

7 THE WITNESS: Okay.

8 MR. PENN: Can we go off the record?

9 THE VIDEOGRAPHER: The time is

10 12:31 p.m., and we're going off the record.

11 (Recess taken from 12:31 p.m.

12 to 12:47 p.m.)

13 THE VIDEOGRAPHER: The time is

14 12:47 p.m., and we're back on the record.

15 BY MR. PENN:

16 Q. Miss Simmers, we were discussing

17 Epicure and its visit for selling hand

18 sanitizer. You indicated that there were

19 discussions about Epicure selling hand sanitizer

20 prior to 2020 but it was certainly happening in

21 March 2020; is that correct?

22 A. Yes.

23 Q. Was Epicure engaging manufacturers of

24 hand sanitizer?

25 A. Yes.

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1 SARAH SIMMERS

2 Q. Just to back up a little bit, were you

3 involved in the process of identifying

4 manufacturers of hand sanitizer at this time?

5 A. Directly, no. That was Lee and Dan's

6 lane, Lee's mostly.

7 Q. So did you have any input or

8 recollection about how manufacturers were

9 chosen?

10 A. Yeah, I did have involvement in that.

11 We had engaged in a contractual relationship

12 with Paul because Paul has a lot -- extensive

13 relationships in the contract manufacturing. So

14 we hired a consultant basically to help us

15 there, Bath Manufacturers. So Paul was involved

16 with us with.

17 So I know Voyant was a very reputable

18 company. We were very impressed with them. I

19 believe the customers were asking for more of a

20 gel finish. A lot of the finishes were really

21 tacky. So when we were vetting manufacturers,

22 we were looking at quality. There was a lot of

23 bad -- I'll say bad actors maybe is a good word

24 to use in the marketplace. So we spent some

25 time with Paul vetting who we wanted to work

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1 SARAH SIMMERS

2 Q. And did there come a time when Epicure

3 engaged Voyant to produce hand sanitizer?

4 A. Yes, sir.

5 Q. What was -- did you have any role in

6 engaging Voyant?

7 A. I did not. Not directly.

8 Q. Did you say "not directly"?

9 A. Not directly.

10 Q. Okay.

11 A. It wasn't my lane, basically.

12 Q. Did you have any -- so did you have any

13 interactions with anyone at Voyant in March 2020

14 that you can recall?

15 A. Directly to me, I only -- my only

16 involvement with Voyant was approving, like, I

17 approved I think the label because I was working

18 on the branding, and I believe I received an

19 e-mail, and I approved a label and also approved

20 product. I think they sent me a sample that I

21 approved for the -- what the label content was.

22 But I was copied -- I was looped on -- I was

23 aware of some of the e-mails going back and

24 forth that Lee and Dan were engaging with Voyant

25 for procurement of sanitizer.

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1 SARAH SIMMERS

2 with and who had a product that the customers

3 were looking for because they were working --

4 they wanted less liquid liquidy, and they wanted

5 more gel of which Voyant had a gel-based

6 product, which was desirable, and it was a nice

7 product they produced when we looked at their

8 samples.

9 So I was involved in that part of it on

10 the periphery of just looking at the sample and

11 looking at some of their SDSs they're called,

12 you know, the safety data sheets and stuff that

13 they produced, I looked at the safety data

14 sheets. We were trying to determine some of

15 those quality, you know, basically quality

16 measures you'd be looking for in a manufacturer.

17 So that's about what I had to do with it on the

18 very early side.

19 Q. Okay. You mentioned that customers or

20 potential -- I guess they were -- were they

21 customers or were they potential customers that

22 were wanting the gel?

23 A. Well, they were -- at what point are

24 you a customer?

25 Q. Well --

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1 SARAH SIMMERS

2 A. What are you asking? If you could

3 rephrase that. I'm just not quite understanding

4 what you're asking me.

5 Q. You testified that customers were

6 looking for the gel product, so I'm just asking,

7 you know --

8 A. And that was information from Dan.

9 Yeah, that's what -- that's what the ask was.

10 So when you're trying to procure a product, you

11 want to procure what the customer wants. So if

12 they're asking for gel and not a liquid and

13 we're trying to find a manufacturer, you've got

14 to match that up. If I have a liquid, I'm not

15 going to sell it if that's not what the customer

16 wants.

17 Q. At the time in March 2020, do you know

18 if Epicure had any commitments for the sale of

19 sanitizer except for the one you mentioned

20 earlier?

21 A. Define "commitments."

22 Q. I think I would just see if you can

23 answer the question.

24 A. It's hard for me to answer that

25 question not truly understanding what you mean

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1 SARAH SIMMERS

2 don't know much more beyond that, just that Paul

3 has a lot of experience in manufacturing.

4 That's his background. So we engaged a

5 consultant to help us make a decision there, and

6 Paul -- so that's why we engaged Paul.

7 Q. And I'm not sure if you said this. Did

8 you have a role in choosing -- strike that.

9 Did you have a role in choosing Voyant

10 to manufacture hand sanitizer for Epicure?

11 A. I didn't. That was not my lane.

12 Q. And who, if you know, chose Voyant?

13 A. Ultimately, I don't know if it was Dan

14 or Lee, and I'm sure they did it together. I

15 don't know.

16 Q. You also talked about some of the

17 quality control that you did. Did you do the

18 quality control on products for a variety of

19 manufacturers?

20 A. No, but I do it in my day job. So my

21 role as it relates to that is my industry --

22 there was pharmacists in my industry that were

23 compounding sanitizer under the FDA guides.

24 Okay? We did not choose to do that because I

25 had this opportunity in Epicure. So I have --

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1 SARAH SIMMERS

2 by "commitment." There were people looking for

3 the product, yes, and this was the

4 specifications they were looking for a gel.

5 They were discussing sizes. It was so difficult

6 to find bottles, like, getting all of those

7 parts to line up to have a true customer you

8 needed to be able to bring them to what they're

9 asking for.

10 So you had -- you see it's the chicken

11 and the egg here in the sense that you had to

12 have what they want for that, yes, and if we

13 could get the commitments from procurement,

14 then, yes, you could have a commitment. Does

15 that make sense?

16 Q. Okay.

17 A. It's trying to get all that to line up,

18 and they did a lot -- they spent a lot of hours

19 at it.

20 Q. Okay. Shifting back to choosing

21 manufacturers of hand sanitizer, you said you

22 engaged a consultant, Paul, to assist Epicure

23 with that. And who is Paul?

24 A. Paul Hexsom is a relationship of Lee's.

25 I know they've known each other a long time. I

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1 SARAH SIMMERS

2 because of my day job and because there was the

3 guidance document put out by the FDA, I was

4 aware of what their requirements were for

5 quality. So my role, when it came to

6 manufacturers, I just said, "Guys, as long as

7 they're meeting the guidance documents, please

8 let me see the SDS."

9 I don't -- I won't put -- we won't put

10 our name on somebody or work with somebody that

11 we can't be sure, especially as professionals,

12 like, I just can't do that, that I can give

13 something to somebody that's not safe.

14 Q. You said that -- you made reference to

15 your day job. Are you referring to --

16 A. Yeah, I'm -- because I'm a pharmacist.

17 That's what I mean. I'm referencing the fact

18 that I'm a pharmacist.

19 MR. KORANTENG: You wait until he

20 finishes his question, then you answer.

21 THE WITNESS: Okay.

22 MR. KORANTENG: I think we're speaking

23 over each other.

24 THE WITNESS: Sorry.

25 MR. KORANTENG: Sorry.

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1 SARAH SIMMERS
2 THE WITNESS: Sorry.
3 BY MR. PENN:
4 Q. We'll start over a little bit. So you
5 made reference to your day job as a pharmacist.
6 Is that with Customedico?
7 A. Yes.
8 Q. Okay. So you testified, I believe,
9 that you -- you reviewed or inspected Voyant's
10 hand sanitizer product, a sample; is that
11 correct?
12 A. Yes.
13 Q. And you reviewed their safety data
14 sheet; is that correct?
15 A. Yes, sir.
16 Q. In terms of reviewing the product
17 sample, can you tell me how you -- what you used
18 to assess the sample?
19 A. I looked at the quality of the
20 container, I looked at how the product felt, I
21 looked at the safety data sheet in regards to
22 the contents.
23 Q. You also said you approved a label.
24 Was it -- this is labels for the bottles, you
25 mean?

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1 SARAH SIMMERS
2 spec, and I approved it.
3 Q. Okay. Just one more question on the
4 sample. Did the makeup of the sample, did
5 Voyant provide that or was there any input from
6 Epicure?
7 MR. KORANTENG: Objection, vague.
8 MR. PENN: Yeah, let me see if I can
9 ask it differently.
10 BY MR. PENN:
11 Q. Did Epicure request a sample of hand
12 sanitizer from Voyant?
13 A. I believe so, yes. I believe we
14 requested that. I didn't make the request, but
15 Epicure did. I don't know if it was Lee, I
16 don't know if it was Dan.
17 MR. PENN: Okay. Let me go to what's
18 going to be Exhibit 5.
19 (Simmers Exhibit 5 was marked
20 for ID.)
21 BY MR. PENN:
22 Q. Okay. Do you recognize this document?
23 A. (Reviewing document.)
24 It's an e-mail.
25 Q. Okay, and what is it?

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1 SARAH SIMMERS
2 A. Yes, sir.
3 Q. What was the process for approving the
4 labels?
5 A. What process did I go through? Can you
6 ask the question differently? Like, what do you
7 mean?
8 Q. Just, I guess, maybe start with a
9 general step-by-step in terms of how the labels
10 were approved. So did Voyant provide a sample
11 label to Epicure for its approval?
12 A. Yes, please. Yes, they sure did.
13 Q. Did Epicure have any input into what
14 was supposed to go onto that initial label
15 sample?
16 A. The only -- only from the design aspect
17 for the -- for Epicure's brand. The -- I would
18 say the monograph labeling came from Voyant.
19 Q. And once you received the label sample,
20 what did you need or what did you do to approve
21 it?
22 A. It -- I reviewed -- I reviewed the --
23 for correctness, basically. Did it match what
24 we provided them for the branding, yes, and it
25 did. I approved it. You had -- you had a label

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1 SARAH SIMMERS
2 A. I can see the top of it is an e-mail.
3 Q. Sure. Let me start over, back up a
4 little bit. This was produced by your counsel.
5 It's Exhibit 5. It's identified as DEF4811
6 through 4812. Let me show you first. It's two
7 pages in this document.
8 A. Okay.
9 Q. I can show you the first page, and let
10 me know if you can see all of it.
11 I'll go to the second page.
12 This exhibit is also in the chat if you
13 want to see it.
14 Okay. Do you -- do you recognize what
15 this is?
16 A. That's the LOI. It looks to be the LOI
17 we sent.
18 Q. Okay. And how did this LOI come about?
19 A. I understood from our calls that
20 Michael needed a placeholder until Epicure's was
21 formed. He needed a placeholder so we could
22 have our basically place in line, to hold our
23 place in line. So that's the LOI that Lee sent.
24 Q. And so you said Michael needed a
25 placeholder?

<p style="text-align: right;">Page 74</p> <p>1 SARAH SIMMERS</p> <p>2 A. Yes.</p> <p>3 Q. Who is Michael?</p> <p>4 A. Michael Partridge from Voyant. His</p> <p>5 name is right on the document. I believe that's</p> <p>6 who Lee was working with representing Voyant, to</p> <p>7 my understanding.</p> <p>8 Q. And do you have any knowledge of what</p> <p>9 conversations led to this LOI aside from what</p> <p>10 you've already testified to?</p> <p>11 A. Just that we had to get -- we had</p> <p>12 customers that wanted to purchase sanitizer, and</p> <p>13 we had to get in line with Voyant if we were</p> <p>14 going to work with them. That's all I know</p> <p>15 about it. And Lee had put this in place so that</p> <p>16 we could basically get in the manufacturing --</p> <p>17 get an opportunity with Voyant. They had other</p> <p>18 people interested, I understood, in the prod --</p> <p>19 in their product.</p> <p>20 Q. Do you know -- well, strike that.</p> <p>21 This LOI indicates or, rather, it</p> <p>22 states, "We are committed to purchasing one</p> <p>23 million units of 2-ounce sanitizers at a turnkey</p> <p>24 price of 93 cents per unit."</p> <p>25 Do you know if formal purchase orders</p>	<p style="text-align: right;">Page 75</p> <p>1 SARAH SIMMERS</p> <p>2 were issued after this LOI was sent to Voyant?</p> <p>3 MR. KORANTENG: Objection to form,</p> <p>4 vague.</p> <p>5 THE WITNESS: I know we did a purchase</p> <p>6 order out of Epicure once everything was in</p> <p>7 place. I do know that, yes.</p> <p>8 BY MR. PENN:</p> <p>9 Q. And just to further clarify, the e-mail</p> <p>10 is dated March 26th, 2020, and the LOI, which is</p> <p>11 also dated the same day, also says, "This letter</p> <p>12 of intent is intended for you to immediately</p> <p>13 procure the bottles and caps prior to a formal</p> <p>14 purchase order."</p> <p>15 Do you see that on the LOI?</p> <p>16 A. I do see it, yes.</p> <p>17 Q. Do you know why Foxhole didn't issue</p> <p>18 purchase orders?</p> <p>19 A. Because we had no intent of -- of</p> <p>20 Foxhole --</p> <p>21 MR. KORANTENG: One second, Sarah. One</p> <p>22 second. Let me interject my objection. Okay?</p> <p>23 THE WITNESS: Oh, sure, okay.</p> <p>24 MR. KORANTENG: I object to the</p> <p>25 question as being asked and answered several</p>
<p style="text-align: right;">Page 76</p> <p>1 SARAH SIMMERS</p> <p>2 times already.</p> <p>3 If you want, you can go ahead and</p> <p>4 answer.</p> <p>5 THE WITNESS: Ask me the question</p> <p>6 again, please.</p> <p>7 BY MR. PENN:</p> <p>8 Q. Do you know why Foxhole didn't issue</p> <p>9 purchase orders?</p> <p>10 A. Because we were going to work with</p> <p>11 Voyant as Epicure, not Foxhole. We were always</p> <p>12 engaging with Voyant as Epicure.</p> <p>13 Q. Okay. And this LOI is submitted on it</p> <p>14 looks like Foxhole letterhead; is that correct?</p> <p>15 A. It is.</p> <p>16 Q. And if you look at the e-mail header,</p> <p>17 it looks like Lee Ori sent it from</p> <p>18 lee@foxholemed.com; is that correct?</p> <p>19 A. He did, yes. We did not have Epicure</p> <p>20 fully set up yet.</p> <p>21 Q. If you look at the top of the e-mail,</p> <p>22 at the very top, it indicates -- it looks like</p> <p>23 it indicates this was forwarded on</p> <p>24 February 21st, 2020. Do you see that?</p> <p>25 A. I do.</p>	<p style="text-align: right;">Page 77</p> <p>1 SARAH SIMMERS</p> <p>2 Q. It was from lee@epicure.med?</p> <p>3 A. Um-hum.</p> <p>4 Q. Epicuremed.com. Excuse me.</p> <p>5 And you sent -- or -- and it's from</p> <p>6 sarah@foxhole.med; is that correct?</p> <p>7 A. Um-hum, because I didn't have an</p> <p>8 Epicure e-mail at the time. We just didn't have</p> <p>9 it set up yet. So you will see that as Foxhole.</p> <p>10 Q. Did you in fact forward this e-mail on</p> <p>11 February 21st, 2022?</p> <p>12 A. Yes.</p> <p>13 Q. And do you recall why you forwarded it?</p> <p>14 A. Do I recall why I did?</p> <p>15 Q. I'll withdraw that question.</p> <p>16 Have you received instruction from your</p> <p>17 counsel to search for documents for this matter?</p> <p>18 MR. KORANTENG: I will instruct the</p> <p>19 witness not to answer that if the -- if the</p> <p>20 instruction -- what her and I discussed or not</p> <p>21 discussed she can't really testify about.</p> <p>22 MR. PENN: Let me clarify. I'm not --</p> <p>23 I'm not asking in this question for any</p> <p>24 attorney-client privileged communication. I</p> <p>25 just want to know if Miss Simmers received an</p>

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1 SARAH SIMMERS

2 instruction to search for documents for -- to be

3 produced in this matter.

4 THE WITNESS: No, Robert, I'm having

5 trouble hearing you. I keep leaning in because

6 I can't -- you lean back, and I can't hear what

7 you're saying.

8 MR. PENN: Sure. Well, I'll say it

9 again.

10 BY MR. PENN:

11 Q. Have you received any instructions to

12 search for documents for this matter?

13 A. Define "this matter."

14 Q. This lawsuit.

15 A. To search for documents? I know we had

16 to submit e-mails that we had, if I had any

17 e-mails I could contribute, that I was to

18 provide, but I -- these were already provided by

19 Lee, so I -- I was asked that.

20 Q. Okay.

21 A. For discovery.

22 Q. And -- sure. That's what I'm referring

23 to.

24 And so you sent this particular e-mail

25 on February 21st, 2022?

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1 SARAH SIMMERS

2 orders submitted to Voyant Beauty for hand

3 sanitizer. I'm going to -- I'll scroll

4 through -- this is eight pages. I'll just

5 scroll through these so you can see the full

6 document is also in the chat if you'd like to

7 download it. Can you see the document in the

8 share screen?

9 A. I can.

10 Q. Okay.

11 A. I can. I'm, like, leaning back so I

12 can -- it's very small.

13 Q. How's that?

14 A. That's a little bit better. Thank you.

15 Q. All right. Do you recognize these

16 documents?

17 A. Yes.

18 Q. Do you recall seeing -- well, strike

19 that.

20 Can you -- strike that.

21 What are they?

22 A. They're purchase orders from Epicure.

23 Q. And they're purchase orders for hand

24 sanitizer; is that correct?

25 A. Correct.

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1 SARAH SIMMERS

2 A. Yep.

3 Q. When did you first receive the

4 instruction about searching for e-mails or

5 producing e-mails in discovery, do you recall?

6 A. We first talked about it last year.

7 Q. Is there a reason why you produced

8 it -- you didn't produce this document or you

9 didn't forward this document from Lee Ori last

10 year?

11 A. No. Well, he'd already submitted this.

12 It's the same content.

13 Q. What caused you to send it on

14 February 21st of this year, if you recall?

15 A. I don't. I don't recall specifically

16 why I forwarded it back to him. I don't recall.

17 It's just a forward of an existing e-mail.

18 MR. PENN: Okay. I'm going to

19 introduce Exhibit 6.

20 (Deposition Exhibit 6 was

21 marked for ID.)

22 BY MR. PENN:

23 Q. These are documents produced by your

24 counsel. They're identified as DEF4741 through

25 DEF4748. I'll represent that these are purchase

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1 SARAH SIMMERS

2 Q. Can you walk me through the process of

3 creating a purchase order in this case?

4 A. I can't because it wasn't -- that

5 wasn't my role. Creating it wasn't my role.

6 Q. Were you aware that these orders were

7 being placed at that time?

8 A. I was, yes.

9 Q. So and you are aware that Epicure

10 issued five purchase orders in April 2020?

11 A. I couldn't recall the exact number and

12 dates. I would have to look at them, but yes, I

13 see April 13th.

14 Q. And this first purchase order is

15 purchase order 1011 for 600,000 -- 600,000 units

16 of 2-ounce hand sanitizers. Do you see that?

17 A. 600,000, yes.

18 Q. And then the second purchase order for

19 another 600,000. This is purchase order 1012.

20 Do you see that?

21 A. Can you scroll back up to the first one

22 ahead?

23 Q. Yes. (Complying.)

24 A. Okay. I see that.

25 Q. There's a third purchase order number

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1 SARAH SIMMERS
2 1013 dated April 13th, 2020, for 120,000 units
3 of hand sanitizer.
4 A. Yeah, they're different sizes I see.
5 Q. Yes, yes, correct, yes. This one is
6 for a 12-ounce bottle. So that's about a total
7 amount purchased of 2.4 million units, 2-ounce,
8 correct?
9 A. Well, that's not -- they're not all
10 2 ounce. Oh, okay, now you're down to another
11 one.
12 Q. You're right.
13 A. There are different sizes. I know
14 different customers wanted different sizes.
15 Q. Correct. Let me continue. This is
16 purchase order 1018 for 600,000 units of 2-ounce
17 hand sanitizer; is that right?
18 A. That is, yes.
19 Q. And this is a purchase order number
20 1019 dated April 16th, 2020, for 600,000 units
21 of 2-ounce hand sanitizer, right?
22 So now what we've seen, we're seeing
23 2.4 million 2-ounce units that Epicure ordered
24 in April; is that correct?
25 A. I believe that's correct, yes.

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1 SARAH SIMMERS
2 It wasn't my lane. I was doing other things for
3 the business.
4 MR. PENN: I'll move on to what's going
5 to be Exhibit 7.
6 (Simmers Exhibit 7 was marked
7 for ID.)
8 BY MR. PENN:
9 Q. This is a document provided by your
10 counsel. It's identified as DEF4659 through
11 DEF4660. There's two pages here. So look at
12 the first page. I'll let you review it, and let
13 me know when I can bring up the second page.
14 A. Are you wanting me to review the
15 April 22nd e-mail?
16 Q. I'll direct your attention to part of
17 it. I just wanted you to see it. Just let me
18 know when you're ready.
19 A. (Reviewing document.)
20 Okay.
21 Q. Moving up now, we're on the second
22 page.
23 A. Yeah, can you make that bigger, please?
24 Q. Yeah, I will, and I think the chart is
25 little bit --

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1 SARAH SIMMERS
2 Q. And when these orders were placed in
3 April 2020, did you have an understanding that
4 the cost of these goods was over 2.6 million?
5 MR. KORANTENG: Objection, misstates
6 her testimony earlier. Also been asked and
7 answered.
8 BY MR. PENN:
9 Q. You can answer, Miss Simmers.
10 A. I was aware of the purchase orders. I
11 didn't recall exactly the amounts and the dates.
12 I didn't. (Shaking head.)
13 Q. Do you know, in April 2020, did Epicure
14 have \$2.6 million?
15 A. Did we have -- have \$2.6 million? We
16 did not, but we had, I believe, orders from
17 customers that reflected the order, quantities
18 ordered from Voyant. That's what I know.
19 Q. How do you know that?
20 A. From my calls with Dan and Lee when we
21 would -- when we would talk about what they were
22 putting together, that's what I know from them.
23 Q. Okay. So Dan or Lee told you --
24 A. They were running the sales side of
25 things, yes. I was on the periphery of this.

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1 SARAH SIMMERS
2 A. Really hard to read.
3 Q. It's very hard to read. I'll try to
4 make it bigger, but I think it's going to make
5 it blurrier, frankly.
6 A. Yeah, I see it's a chart.
7 Q. It's okay if you can't read it. I'm
8 not going to --
9 A. Yeah, I can't -- I can't, but I can see
10 it's a chart.
11 Q. I'm not going to ask you to -- I'll
12 just note that at the bottom it says that it
13 looks like there's an attachment to this e-mail
14 that says pro forma sanitizer. Do you see that?
15 A. Yeah, I do. So that's I guess -- I
16 know we were talking about pro formas on the
17 calls. I just didn't recall if I ever saw one
18 or not, but I see what you're referencing there.
19 MR. PENN: I'll submit to you that you
20 produced the pro forma hand sanitizer that was
21 attached to this e-mail. It looks like this is
22 the chart that's imbedded here, but I -- it's
23 not legible, so can we have the native version?
24 MR. KORANTENG: Yeah, if it's not
25 attached yet, I'll be more than happy to find

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1 SARAH SIMMERS
2 that sales pro forma and provide them, produce
3 it.
4 MR. PENN: Great. Thank you.
5 MR. KORANTENG: You're welcome.
6 BY MR. PENN:
7 Q. If you look at the earliest e-mail on
8 this page, it's dated April 22nd, 2020, from Lee
9 Ori to Dan Reilly --
10 A. Dan.
11 Q. -- and Dan Courtney yourself and a
12 Jason --
13 A. Yeah.
14 Q. Lee Ori writes, "I want each of you to
15 spend a few minutes on Wednesday and write down
16 every single contact that you think you can
17 either sell sanitizer to or that you can get to
18 sell it for you."
19 Do you see that?
20 A. I do.
21 Q. Did you have any understanding of what
22 Lee Ori was trying to convey with this e-mail or
23 with that sentence?
24 A. I don't. That would be a question for
25 Lee.

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1 SARAH SIMMERS
2 make this happen. I know they are going to look
3 at this and think it isn't real."
4 So do you think he's referring to
5 potential lenders in that sentence?
6 MR. KORANTENG: Objection. It
7 requires, you know, to speculate as to what
8 somebody was thinking at the time somebody else
9 wrote an e-mail.
10 THE WITNESS: Yeah, I don't know. I
11 know he was meeting with lenders. That's all I
12 know of it.
13 BY MR. PENN:
14 Q. What discussions did you have about
15 Ori -- excuse me. Withdrawn.
16 Did you have any discussions with
17 Mr. Ori about potential lenders?
18 A. Yes. I know he and Dan met with a
19 couple of banks, and then they had met with a
20 gentleman -- it's something I don't really
21 understand so well, but it was something to do
22 with purchase orders, with a different type of
23 lending. I don't know. It was purchase -- it
24 was something to do with purchase orders. I --
25 like I said, I'd be on the call. The sales part

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1 SARAH SIMMERS
2 Q. Did you do anything in response to
3 reading this e-mail?
4 A. Say that again.
5 Q. Did you do anything in response to
6 reading this e-mail?
7 A. I was copied on it for reference. I
8 was not -- sales was not my lane. I wouldn't
9 have done anything with it.
10 Q. Do you know if Epicure had orders for
11 the sale of sanitizer at this time on
12 April 22nd?
13 A. Yes. To my knowledge, yes. Which
14 ones, how much, I don't know because that just
15 wasn't my lane. I was working on other things.
16 I would be looped on our calls, and we would
17 talk about it, but I don't recall particular
18 customers, particular details for April 2020.
19 I know we were going -- what I can say
20 to that is I know he was meeting with banks and
21 lenders. I know he was. So I don't know
22 anything beyond that.
23 Q. Okay. It does say further in this
24 e-mail, it says -- Lee Ori writes, "I want to
25 blow away a potential lender at our capacity to

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1 SARAH SIMMERS
2 of it, I just listened. I didn't actively -- I
3 just listened on -- on what they were talking
4 about and what they were doing, and then I would
5 do my part and talk about what I was doing.
6 So what I just recall is they had met
7 with some banks, gone in and sat down, and then
8 there was a gentleman, something to do with POs,
9 that if you had a purchase order, they would --
10 I don't know -- somehow finance new purchase
11 orders. That's as much as I know or know or
12 remember of it.
13 Q. You just said -- I think you made
14 reference to this earlier. You were doing --
15 you were doing your own part or -- let me strike
16 that.
17 You just testified that on these calls
18 with Dan and Mr. -- and Lee Ori that you would
19 do your part and talk about what you were doing?
20 A. Yes.
21 Q. What are you referring to? What were
22 you doing?
23 A. Well, early on, like I said, it was the
24 marketing pieces, the website content. Once
25 that was done, pivoted into infrastructure

<p style="text-align: right;">Page 90</p> <p>1 SARAH SIMMERS</p> <p>2 things, I vetted a couple of companies to</p> <p>3 support the sales. Dan was building the sales</p> <p>4 team.</p> <p>5 I was -- I met a company called RepZio</p> <p>6 where I was putting together an app where the</p> <p>7 sales team could know what our inventory was in</p> <p>8 front of the customer. So I signed a contract</p> <p>9 with them to implement that, and it integrated</p> <p>10 with QuickBooks so we could know exactly in</p> <p>11 realtime if they were out in, let's say, a --</p> <p>12 one of the convenient stores with their</p> <p>13 customer, they'd know exactly what we had in</p> <p>14 stock to basically restock the store, which was</p> <p>15 the intention.</p> <p>16 The difficulty was, when we were on the</p> <p>17 calls, was infrastructure-wise. It was, like,</p> <p>18 how do we know exactly what we have to provide</p> <p>19 to the customer in the moment and do it timely?</p> <p>20 So they tasked me with trying to figure</p> <p>21 out a way to do that to generate POs and to know</p> <p>22 supply chain, and I engaged in a contract with</p> <p>23 the RepZio to do that so they'd have that on</p> <p>24 hand for the sales team.</p> <p>25 I was working on a kind of unified kind</p>	<p style="text-align: right;">Page 91</p> <p>1 SARAH SIMMERS</p> <p>2 of sales contract for the sales team. I was</p> <p>3 just trying to do infrastructure things that</p> <p>4 made daily tasks, trying to build this behind</p> <p>5 them so that the sales team had what they needed</p> <p>6 to sell effectively. So I was kind of</p> <p>7 operations stuff, I'd say, probably,</p> <p>8 infrastructure.</p> <p>9 I also did merchanting. Lee helped me</p> <p>10 with that. We did that one together, getting</p> <p>11 merchant services so we could take a credit card</p> <p>12 if we needed to. If it wasn't on a PO, then</p> <p>13 they had both options, to do credit card or</p> <p>14 purchase order and then with payment terms.</p> <p>15 MR. PENN: I'm going to move on to</p> <p>16 Exhibit 8.</p> <p>17 (Simmers Exhibit 8 was marked</p> <p>18 for ID.)</p> <p>19 BY MR. PENN:</p> <p>20 Q. This is a document provided by your</p> <p>21 counsel. It is identified at DEF4737 through</p> <p>22 DEF4740. Do you recognize this document?</p> <p>23 A. I do.</p> <p>24 Q. And what is it?</p> <p>25 A. It was a loan. Can you scroll down?</p>
<p style="text-align: right;">Page 92</p> <p>1 SARAH SIMMERS</p> <p>2 Q. Yes.</p> <p>3 A. I believe that's what this is.</p> <p>4 (Reviewing document.)</p> <p>5 Keep scrolling.</p> <p>6 Q. Oh?</p> <p>7 A. Yeah, I believe this was money Lee</p> <p>8 loaned Epicure. Can you scroll back? Yeah,</p> <p>9 this was money Lee loaned Epicure, I believe.</p> <p>10 Q. Let me go back to the first page.</p> <p>11 A. Yeah, go back up to the top.</p> <p>12 Q. (Complying.)</p> <p>13 A. Promissory note to Epicure, yeah, to</p> <p>14 Lee, yeah. This is money that he lended</p> <p>15 Epicure.</p> <p>16 Q. Do you know why there's a -- he's</p> <p>17 executing a promissory note to Epicure?</p> <p>18 A. I think it was kind of -- I'd call it a</p> <p>19 bridge loan maybe is a good term. He was trying</p> <p>20 to bridge until we had either some -- I believe</p> <p>21 some receivables coming in or there was</p> <p>22 something to do with the lending, but it was</p> <p>23 a -- it was a capital into business for a loan</p> <p>24 to kind of bridge, I believe, the payments due</p> <p>25 to us from customers.</p>	<p style="text-align: right;">Page 93</p> <p>1 SARAH SIMMERS</p> <p>2 Q. Okay. I'm going to go to the last page</p> <p>3 here, and this is a signature page. It says,</p> <p>4 "Execution date, May 8, 2020," and your name and</p> <p>5 signature are under the -- signing for Epicure;</p> <p>6 is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. I'm just going to scroll back to the</p> <p>9 top. Did Lee Ori actually transfer the \$135,000</p> <p>10 to Epicure as indicated in the promissory note?</p> <p>11 A. To my knowledge, absolutely.</p> <p>12 Q. Did you have discussions with Mr. Ori</p> <p>13 about him making this move?</p> <p>14 A. Yes. Yes.</p> <p>15 Q. And what were those discussions?</p> <p>16 A. Just that he was willing to do it</p> <p>17 because he believed in it. He believed in what</p> <p>18 we were doing.</p> <p>19 Q. The promissory note says the maturity</p> <p>20 date is August 2020. Do you know if Epicure</p> <p>21 paid back the loan?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know when Epicure paid back the</p> <p>24 loan?</p> <p>25 A. I don't off the top of my head, I</p>

<p style="text-align: right;">Page 94</p> <p>1 SARAH SIMMERS</p> <p>2 don't. I know we did. I just don't know when.</p> <p>3 Q. It also says on bullet number 2 under</p> <p>4 principal and interest payments: "Borrower</p> <p>5 shall promptly pay lender \$25,125 on a date not</p> <p>6 beyond the maturity date stated above."</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. Do you know if Epicure paid Lee Ori the</p> <p>10 \$25,125?</p> <p>11 A. From the top -- off the top of my head,</p> <p>12 I don't. I know we paid the loan back. I don't</p> <p>13 know if -- I'm not sure on the interest.</p> <p>14 Q. So I think you testified earlier that</p> <p>15 Lee Ori was having -- was looking for financing</p> <p>16 for Epicure. Is that accurate?</p> <p>17 A. Epicure was looking for financing, yes.</p> <p>18 It was he and Dan that went together to the</p> <p>19 banks.</p> <p>20 Q. And do you know why that they were</p> <p>21 looking for financing? I'm not sure you</p> <p>22 answered that earlier.</p> <p>23 A. What -- what I understand of it from</p> <p>24 our meetings, we were getting bigger customers</p> <p>25 like when Dan Courtney was out, he was getting</p>	<p style="text-align: right;">Page 95</p> <p>1 SARAH SIMMERS</p> <p>2 Albertson, some of the larger grocery chains,</p> <p>3 grocery store chains, and to get their business</p> <p>4 they wanted terms. They weren't willing -- you</p> <p>5 know, first in the beginning, the first</p> <p>6 customers were willing to pay more up front</p> <p>7 because they knew they had to because it was so</p> <p>8 hard to get. They had to be -- give a little</p> <p>9 bit.</p> <p>10 But as time progressed, then we got to</p> <p>11 larger -- I'd say larger groups. I think it</p> <p>12 was -- it was more the grocery stores than the</p> <p>13 gas stations, but the larger groups were more</p> <p>14 aggressive in their terms, and they needed --</p> <p>15 they wanted terms from us. So I believe that</p> <p>16 was the necessity for lending was because we had</p> <p>17 to -- we had to pay, you know, to meet our terms</p> <p>18 with the manufacturers such as Voyant. We</p> <p>19 needed more capital to do it. So that was why</p> <p>20 they were seeking lending or different ways to</p> <p>21 finance that gap. And I think while we were</p> <p>22 working on it, this was -- well, this is why Lee</p> <p>23 put in -- put in the capital while they were</p> <p>24 trying to secure, secure that. That was my</p> <p>25 understanding of it. Those bigger -- bigger</p>
<p style="text-align: right;">Page 96</p> <p>1 SARAH SIMMERS</p> <p>2 stores and gas stations weren't willing to put</p> <p>3 as much down. They didn't want to pay until</p> <p>4 they got the product.</p> <p>5 Q. Do you know if Mr. Ori, Lee Ori was</p> <p>6 successful in seeking -- getting funding for</p> <p>7 Epicure?</p> <p>8 A. I know he wasn't with the banks.</p> <p>9 MR. KORANTENG: Sarah, Sarah. Wait.</p> <p>10 Let me object first.</p> <p>11 Objection. The question is vague.</p> <p>12 THE WITNESS: Sorry, Fibbens.</p> <p>13 MR. KORANTENG: Okay. Just give me a</p> <p>14 second.</p> <p>15 THE WITNESS: No, I'm sorry.</p> <p>16 MR. KORANTENG: That's okay. You're</p> <p>17 doing fine.</p> <p>18 THE WITNESS: I'm just trying to</p> <p>19 answer.</p> <p>20 MR. KORANTENG: You're doing fine. You</p> <p>21 can go ahead and answer pursuant to my</p> <p>22 objection.</p> <p>23 THE WITNESS: He wasn't successful with</p> <p>24 the -- with the large banks or the banks that he</p> <p>25 went to. I know that he had some trouble with a</p>	<p style="text-align: right;">Page 97</p> <p>1 SARAH SIMMERS</p> <p>2 gentleman that was doing the PO. He spent a lot</p> <p>3 of time working with this gentleman, and I know</p> <p>4 we had ended up in a lawsuit over it, but that's</p> <p>5 about what I know of it. That was stuff that</p> <p>6 Lee and Dan were working on in their lane. I</p> <p>7 just knew of it. I knew we weren't successful</p> <p>8 with the banks.</p> <p>9 MR. PENN: Okay. I'm going to -- oops.</p> <p>10 Hold on.</p> <p>11 (Brief pause in proceedings.)</p> <p>12 MR. PENN: Okay. I'm going to</p> <p>13 introduce Exhibit 9.</p> <p>14 (Simmers Exhibit 9 was marked</p> <p>15 for ID.)</p> <p>16 BY MR. PENN:</p> <p>17 Q. This is a document produced by your</p> <p>18 counsel. It's identified at DEF0572. It's a</p> <p>19 May 24th, 2020, e-mail from Lee Ori to Voyant,</p> <p>20 and you are cc'd on this e-mail?</p> <p>21 A. Yes.</p> <p>22 Q. Once you've had a chance to review,</p> <p>23 just let me know.</p> <p>24 A. (Reviewing document.)</p> <p>25 Could you scroll down for me?</p>

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1 SARAH SIMMERS
2 Q. (Complying.)
3 A. (Reviewing document.)
4 I've had a chance to review.
5 Q. Okay. Do you recognize this e-mail?
6 A. I don't remember the details of it, but
7 I was on it, yes. I don't specifically -- I'm
8 answering your question. I don't remember this
9 e-mail. I don't.
10 Q. Okay. Okay. If you look at the --
11 this is -- as I said, this an e-mail from Lee
12 Ori to the Voyant team.
13 A. Okay.
14 Q. The first sentence, he says, "As I
15 expressed on our conference call last week, I'd
16 like to very much like to work with you to ramp
17 up production with your company."
18 Do you see that?
19 A. (Nodding.)
20 Q. Do you recall being on a conference
21 call with Lee Ori and Voyant people?
22 A. I wasn't on the call.
23 Q. Okay. In the first bullet of this
24 e-mail, the first two sentences, it says,
25 "Michael indicated that you could do 2 billion

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1 SARAH SIMMERS
2 Exhibit 10.
3 (Simmers Exhibit 10 was marked
4 for ID.)
5 BY MR. PENN:
6 Q. This is an e-mail chain of several
7 e-mails produced by your counsel. They're
8 identified at DEF0176 through DEF0178.
9 I will -- let me know when you want me
10 to scroll down to the next page.
11 A. It's a cash report from Linda.
12 (Reviewing document.)
13 This -- okay.
14 Q. Okay.
15 A. I got it.
16 Q. Okay. Do you recognize these e-mails?
17 A. I do.
18 Q. Okay. And what are they?
19 A. This was -- Linda was having difficulty
20 is kind of what I was speaking to, with tracking
21 purchase orders. It was -- and keeping track of
22 all of it. That's why I was working on the
23 RepZio part. There was a lot of in and out with
24 different sales reps. So this is what she's
25 speaking to. After our call on processes

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1 SARAH SIMMERS
2 units corporately. Being realistic, how quickly
3 do you think you could ramp up across your
4 facility to say 50 million units a month?"
5 Do you see that?
6 A. I do.
7 Q. Do you recall having any understanding
8 of why Lee Ori was seeking information about
9 50 million units of hand sanitizer?
10 A. I think that was from the sales team.
11 That's what -- I think that's what the customers
12 were asking for. He was trying to get a
13 semblance on the purchase orders that we were --
14 he was just trying to see what they could do
15 based on our demand -- based on the demand in
16 the marketplace.
17 Q. And do you know as -- in -- on
18 May 24th, 2020, do you know if Epicure had sold
19 the 2.4 million units that it'd previously
20 ordered in April?
21 A. I know we'd sold 1.2 by May, but I'm
22 not positive. I know we'd sold 1.2 by May. I
23 recall that. But outside of the 1.2, I don't
24 recall.
25 MR. PENN: I'd like to introduce

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1 SARAH SIMMERS
2 yesterday is -- I was trying to get things a
3 little more organized so that it was smoother,
4 basically.
5 Q. On the --
6 A. I was trying to help put structure in
7 it.
8 Q. In the May 29th, 2020, e-mail -- well,
9 let me back up.
10 The e-mail header says it's from
11 Epicure Medical, and it has an e-mail address,
12 accounting@epicuremed.com?
13 A. Yep.
14 Q. Do you know who was the holder of that
15 account?
16 A. The accounting@epicure.com was Dan, and
17 it was assigned to Linda for PO management. So
18 it would land in Linda's inbox.
19 Q. Okay. And so this e-mail -- I guess
20 Linda is writing, "Good morning. I'm going to
21 start sending cash reports each morning for
22 Epicure."
23 Do you see that?
24 A. Um-hum.
25 Q. Do you know if she -- if Linda sent

<p style="text-align: right;">Page 102</p> <p>1 SARAH SIMMERS</p> <p>2 cash reports each morning?</p> <p>3 A. I don't recall if it was every morning.</p> <p>4 Q. Do you recall the -- sorry. Go ahead.</p> <p>5 A. Um... I don't recall if it was every</p> <p>6 morning because we were trying to move that into</p> <p>7 that app, you know, and she was doing this in</p> <p>8 the interim until we could get this stuff in</p> <p>9 place, basically, where it was on a dashboard I</p> <p>10 think is -- there was a dashboard component to</p> <p>11 it so that she could see it all in realtime in</p> <p>12 and out.</p> <p>13 Q. Do you know when that app or dashboard</p> <p>14 was implemented approximately at the time?</p> <p>15 A. No. We were -- I don't remember. I</p> <p>16 don't. I don't remember the details of the</p> <p>17 dates, no, but it was trying to solve some of</p> <p>18 the manual that this is.</p> <p>19 Q. Okay. On the June 2nd -- on the --</p> <p>20 excuse me. There's an e-mail dated June 2nd</p> <p>21 where it looks like Linda is sending other cash</p> <p>22 reports. Do you see this?</p> <p>23 A. Yeah, it's Epicure Medical, yep.</p> <p>24 Q. It looks like they're attachments,</p> <p>25 Excel spreadsheet attachments indicated on the</p>	<p style="text-align: right;">Page 103</p> <p>1 SARAH SIMMERS</p> <p>2 e-mail. Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. And it indicates -- that e-mail header</p> <p>5 for this June 2nd e-mail indicates that you</p> <p>6 received. It says Sarah Simmers,</p> <p>7 sarah@custommedico.com; is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Is there a reason you were using -- it</p> <p>10 was sent to your Custommedico account, e-mail</p> <p>11 account?</p> <p>12 A. I think it was just an oversight on</p> <p>13 Linda's part. I work with Linda. She's a --</p> <p>14 she does controlling for other businesses, and I</p> <p>15 think she saw Sarah, and I must have picked</p> <p>16 that. I don't know. I can't see why Linda</p> <p>17 would send that to Custommedico because at that</p> <p>18 point I had an Epicure e-mail. I don't know.</p> <p>19 That was Linda's choice and...</p> <p>20 MR. PENN: Okay, I'm going to introduce</p> <p>21 Exhibit 11.</p> <p>22 (Simmers Exhibit 11 was marked</p> <p>23 for ID.)</p> <p>24 BY MR. PENN:</p> <p>25 Q. This is a document produced by your</p>
<p style="text-align: right;">Page 104</p> <p>1 SARAH SIMMERS</p> <p>2 counsel. It doesn't have a Bates stamp, but it</p> <p>3 is the Excel cash report from the June 2nd,</p> <p>4 2020, e-mail that we just saw in Exhibit 10.</p> <p>5 A. Okay.</p> <p>6 Q. The file name is "Epicure Medical</p> <p>7 Financial Quip Report."</p> <p>8 I'm going to scroll through these pages</p> <p>9 here, and then I'll ask you questions.</p> <p>10 MR. KORANTENG: Will you be kind enough</p> <p>11 to give us the Bates number?</p> <p>12 MR. PENN: It was produced without a</p> <p>13 Bates number. It was a native Excel file.</p> <p>14 MR. KORANTENG: Okay.</p> <p>15 BY MR. PENN:</p> <p>16 Q. So this -- I'm going to direct your</p> <p>17 attention to specific pages, so, you know, you</p> <p>18 don't need to study it. If you need closer</p> <p>19 inspection to answer a question, I'll</p> <p>20 certainly -- you'll have time to read it.</p> <p>21 A. Okay.</p> <p>22 Q. Okay. So do you recognize this</p> <p>23 document?</p> <p>24 A. I don't remember it, no. It's a --</p> <p>25 it's part of our -- I don't recognize it.</p>	<p style="text-align: right;">Page 105</p> <p>1 SARAH SIMMERS</p> <p>2 Q. Do you recall -- do you recall</p> <p>3 receiving it in June 2020?</p> <p>4 A. I don't -- I mean, I honestly don't</p> <p>5 remember these details of these cash reports</p> <p>6 from last year or two years ago. I don't</p> <p>7 remember them.</p> <p>8 Q. Did you ever review any of the cash</p> <p>9 reports that were sent to you?</p> <p>10 A. Yes, we did review them in the moment</p> <p>11 at the time.</p> <p>12 Q. Okay. This page, can you see what the</p> <p>13 title of this page is?</p> <p>14 A. The aging, A/P aging.</p> <p>15 Q. Okay. It says Epicure Medical A/P</p> <p>16 aging as of May 28th, May 28, 2020; is that</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And do you see you Voyant Beauty</p> <p>20 on this chart?</p> <p>21 A. I do.</p> <p>22 Q. And does it indicate an amount of</p> <p>23 accounts payable for Voyant?</p> <p>24 A. It does.</p> <p>25 Q. And what is that amount?</p>

<p style="text-align: right;">Page 106</p> <p>1 SARAH SIMMERS</p> <p>2 A. (Reviewing document.)</p> <p>3 It's \$1,848,252.32.</p> <p>4 Q. Okay. This is the second page I think</p> <p>5 of the same cash report. You can see in the</p> <p>6 center of -- in the middle, there's a column.</p> <p>7 It says "Outstanding checks (and withdrawals)."</p> <p>8 Do you see that?</p> <p>9 A. Yep.</p> <p>10 Q. Listed under that column, there's a</p> <p>11 notation that says "6/1/2020, Sarah Simmers</p> <p>12 Dist."</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Do you have an understanding of what</p> <p>16 that refers to?</p> <p>17 A. That is a 10,000, \$10,000 distribution</p> <p>18 to me.</p> <p>19 Q. And did you receive that distribution</p> <p>20 on -- on or about June 1st, 2020?</p> <p>21 A. I believe so, yes.</p> <p>22 Q. And was the payment to you personally?</p> <p>23 A. The payment was to me personally, yes.</p> <p>24 Q. Do you know if Lee Ori received a</p> <p>25 distribution on or around June 1st, 2020?</p>	<p style="text-align: right;">Page 107</p> <p>1 SARAH SIMMERS</p> <p>2 A. Whenever we did a distribution, it was</p> <p>3 done equally. So I -- I know that it was done</p> <p>4 equally, but to say that he got one around then,</p> <p>5 I'm going to say I assume so because that's how</p> <p>6 we distributed.</p> <p>7 Q. Okay. Let's --</p> <p>8 A. Do you mind -- do you mind if I go to</p> <p>9 the bathroom? Is it okay? Can we take a break?</p> <p>10 MR. PENN: Yeah, I was going to say</p> <p>11 let's go off the record.</p> <p>12 THE WITNESS: Oh, does that mean that?</p> <p>13 Okay.</p> <p>14 THE VIDEOGRAPHER: It's 2:01 p.m., and</p> <p>15 we're going off the record.</p> <p>16 (Recess taken from 2:01 p.m.</p> <p>17 to 2:20 p.m.)</p> <p>18 THE VIDEOGRAPHER: The time is</p> <p>19 2:20 p.m., and we're back on the record.</p> <p>20 MR. PENN: Okay. Welcome back, Miss</p> <p>21 Simmers. I want to introduce an Exhibit 12.</p> <p>22 (Simmers Exhibit 12 was marked</p> <p>23 for ID.)</p> <p>24 BY MR. PENN:</p> <p>25 Q. This is a document produced by your</p>
<p style="text-align: right;">Page 108</p> <p>1 SARAH SIMMERS</p> <p>2 counsel. The Bates number is DEF3680. I'll</p> <p>3 represent that this is a letter of intent sent</p> <p>4 from Epicure to Voyant Beauty dated June 4th,</p> <p>5 2020.</p> <p>6 Miss Simmers, do you recognize this</p> <p>7 document?</p> <p>8 A. I don't particularly remember it, but I</p> <p>9 see it's an LOI. I don't remember it. But,</p> <p>10 yes, I see it's an LOI.</p> <p>11 Q. And do you recall seeing it at the</p> <p>12 time, around June 2020?</p> <p>13 A. I don't remember. I just don't</p> <p>14 remember.</p> <p>15 Q. Okay. This letter of intent is signed</p> <p>16 by Lee Ori. It's -- can you -- would you read</p> <p>17 the first sentence of the letter, please?</p> <p>18 A. "Michael, we are committed to</p> <p>19 purchasing 5mm units of 2-ounce hand sanitizer</p> <p>20 monthly for the next 90 days."</p> <p>21 Q. Were you aware in June 2020 that</p> <p>22 Epicure was committing to purchase 5 million</p> <p>23 units of 2-ounce hand sanitizer?</p> <p>24 A. I was aware of it as far as the -- I</p> <p>25 believe -- I thought it was the gas stations</p>	<p style="text-align: right;">Page 109</p> <p>1 SARAH SIMMERS</p> <p>2 that were looking for this size. Exactly the</p> <p>3 number, I don't remember the numbers, but I</p> <p>4 remember that they were looking for that size</p> <p>5 and quite a few of them. That's what I</p> <p>6 remember.</p> <p>7 Q. And when you say "that size," are you</p> <p>8 referring to the 2-ounce?</p> <p>9 A. 2 ounce. Yeah, the 2-ounce size.</p> <p>10 Q. Do you recall having any discussions</p> <p>11 with Lee Ori or Dan Reilly about purchasing</p> <p>12 millions of units of hand sanitizer from Voyant</p> <p>13 in June 2020?</p> <p>14 A. I remember conversations of having</p> <p>15 millions of units purchased, but specifically</p> <p>16 being June, I don't remember it being June</p> <p>17 specifically.</p> <p>18 MR. PENN: I'm going to move on to</p> <p>19 Exhibit 13.</p> <p>20 (Simmers Exhibit 13 was marked</p> <p>21 for ID.)</p> <p>22 BY MR. PENN:</p> <p>23 Q. This is a document produced by your</p> <p>24 counsel. It's DEF0714. Once you've had a</p> <p>25 chance to review it, just let me know.</p>

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1 SARAH SIMMERS

2 A. "Michael, all three partners are in

3 St. Louis meeting this week. I will be in touch

4 with a plan. Thank you."

5 And then can you scroll down to see

6 what --

7 Q. (Complying.)

8 A. (Reviewing document.)

9 So that's from Michael, August 3rd.

10 Can you go back up? Because we --

11 Q. (Complying.)

12 A. Okay. Got it.

13 Q. Okay. Do you recall receiving this

14 e-mail?

15 A. I don't recall receiving the e-mail.

16 Q. Do you -- let's take a look at the

17 August 4th, 2020, e-mail, the top. It says,

18 "All three partners are in St. Louis meeting

19 this week to put together a plan."

20 And that e-mail is from Lee Ori to

21 Michael Partridge, and you are copied on the

22 e-mail. Do you see that?

23 A. Yes.

24 Q. Was -- do you know if Mr. Ori was

25 referring to the three partners of Epicure?

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1 SARAH SIMMERS

2 met two different days.

3 Q. Were those days around August 4th,

4 2020?

5 A. Yeah. I don't know the exact date, but

6 yes.

7 Q. Lee Ori writes in the August 4th e-mail

8 that the -- that the partners will be putting

9 together a plan.

10 Did you discuss a plan during your

11 meeting with Ori and Reilly?

12 A. What I remember was we met, and there

13 was discussions about trying to move product

14 through the grocery stores and the convenience

15 stores specifically, and Dan showed us the --

16 they're called dump boxes. They were boxes that

17 were going to go in the end of the displays to

18 try to move more product because it hadn't been

19 really moving for reorders, and we were trying

20 to move reorders through the different

21 customers. And he was trying strategies to make

22 the product more visible to the customer. So he

23 had prototypes of the dump boxes for the end of

24 the displays he showed us, trying to move things

25 because he was trying to move product off the

Page 111

1 SARAH SIMMERS

2 A. Yes.

3 Q. And by "three partners," did -- is it

4 your understanding Mr. Ori meant you, Lee Ori

5 and Dan Reilly?

6 A. Yes. I'm assuming that because I went

7 to St. Louis.

8 MR. KORANTENG: Sarah, give me one

9 second.

10 THE WITNESS: Sorry, Fibbens.

11 MR. KORANTENG: I want to object. I'll

12 object to the question. It calls for somebody

13 else's state of mind.

14 Subject to that objection, you can go

15 ahead and answer.

16 THE WITNESS: As Fibbens said, I'm

17 assuming it is because we all met in St. Louis,

18 Lee, Dan and myself.

19 BY MR. PENN:

20 Q. What -- do you recall what you

21 discussed during the meeting in St. Louis?

22 A. Generally, yes, I do recall.

23 Q. Do you recall when the meeting

24 occurred?

25 A. The exact date? We did two days. We

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1 SARAH SIMMERS

2 shelf. He had initial POs and commitments, and

3 we were pushing -- he was working with the

4 customers to try to get those next POs in. I

5 remember those details.

6 We went through financials. They

7 talked about sales with customers. He talked

8 about customers. We looked at purchase orders,

9 what -- strategizing to try to put more --

10 because we just weren't getting reorders as they

11 had expected or that had been committed to us.

12 That's what I recall of it from our

13 conversations, generally.

14 Q. If you look at the August 3rd e-mail

15 from Michael Partridge, it says, "Lee, didn't

16 hear from you last week, and now all payables

17 are due."

18 Do you have an understanding of what he

19 was referring to with payables being due?

20 MR. KORANTENG: Objection, calls for

21 what somebody else's state of mind again.

22 THE WITNESS: The all payables he's

23 referring to, I don't know exactly what he's

24 referring to.

25 BY MR. PENN:

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1 SARAH SIMMERS

2 Q. During your meeting with Lee Ori and

3 Dan Reilly, did you discuss any outstanding

4 payables or outstanding balance due to Voyant?

5 A. I don't remember specifically. I don't

6 remember. I know we went through the

7 financials, but exactly the details of the

8 payables, I don't remember.

9 MR. PENN: I'm going to introduce

10 Exhibit 14.

11 (Simmers Exhibit 14 was marked

12 for ID.)

13 BY MR. PENN:

14 Q. This is a document produced by your

15 counsel. It's DEF0082. Just let me know when

16 you want me to scroll down.

17 A. Okay. Got some orders -- a million...

18 oh. (Reviewing document.)

19 Yep.

20 Q. Okay. Do you recognize this document?

21 A. I do.

22 Q. Okay. What is it?

23 A. It's an e-mail I did. There was a

24 distribution partner that I was talking to about

25 our -- about some CBD, that he possibly would be

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1 SARAH SIMMERS

2 BY MR. PENN:

3 Q. In the August 13th response from -- I

4 guess it's William King to you --

5 A. Um-hum.

6 Q. -- he asks about the price of the

7 sanitizer. Do you see that? And on

8 August 14th, it looks like he forwarded the

9 e-mail to Lee; is that right?

10 A. Yes. I asked Lee to follow up with

11 him.

12 Q. Did -- did you get any response from

13 Lee Ori on the price of the sanitizer?

14 A. Lee took it from there, to my

15 knowledge. I think Lee followed up with Bill.

16 I don't believe I did.

17 MR. PENN: Okay. I'd like to introduce

18 Exhibit 15.

19 (Simmers Exhibit 15 was marked

20 for ID.)

21 BY MR. PENN:

22 Q. This is a document produced by your

23 counsel. It's defendant's DEF0421 through

24 DEF0422. It's an e-mail dated September 7th,

25 2020. Let me know when you want me to scroll

Page 115

1 SARAH SIMMERS

2 interested in sanitizer. So I forwarded

3 information on our sanitizer that we were trying

4 to sell, that we had units for. So I sent that

5 to him also.

6 And he never -- he said he would see if

7 there was any of his group that would be

8 interested and he would be -- like, I didn't do

9 sales, so this would be the extent of me having

10 anything to do with that. And I sent him what

11 we had in inventory for -- currently for

12 sanitizer.

13 Q. And in your August 13, 2020, e-mail,

14 you indicate that there are 2-ounce -- there are

15 -- excuse me -- strike that.

16 A. 1.5 million?

17 Q. In your August 13th e-mail, you

18 indicate there are 1.5 million units of 2-ounce

19 hand sanitizer available for immediate delivery;

20 is that right?

21 A. Um-hum.

22 THE REPORTER: Sorry, was that yes?

23 THE WITNESS: Yes that's what the

24 e-mail says.

25 THE REPORTER: Okay. Thanks.

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1 SARAH SIMMERS

2 down.

3 A. (Reviewing document.)

4 Okay.

5 Q. (Complying.)

6 A. (Reviewing document.)

7 Do you mind starting at the bottom so

8 it's -- it's really confusing to start at the

9 end of an e-mail.

10 Q. I was just going to ask you that very

11 question.

12 A. Because I don't remember it. I don't

13 remember this.

14 Q. I'm going to start here, and when

15 you're ready for me to move up, just let me

16 know.

17 A. "Dan, wanted to touch base with you.

18 Here's what I'd like to do."

19 (Reviewing document.)

20 "That way you'll have all money

21 deposited..."

22 Okay, so I read that. Scroll up,

23 kindly.

24 Q. (Complying.)

25 A. "Lee here is the payment that I made."

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1 SARAH SIMMERS

2 Yeah, I remember Dan needing some

3 reimbursements for some stuff he screwed up on.

4 I remember that. Okay. Scroll up.

5 Q. (Complying.)

6 A. Yeah, okay. There we go, Clover Leaf

7 card by mistake, he needs reimbursement.

8 Okay. (Reviewing document.)

9 I've finished reading it.

10 Q. Okay. Do you recall receiving this

11 e-mail? Strike that.

12 A. I don't. I don't.

13 Q. Strike that. I'll withdraw that

14 question.

15 It indicates -- if you look at the

16 September 6th and September 7th e-mail, it

17 appears -- strike that.

18 If you take a look at the

19 September 7th, 2020, e-mail from Lee Ori to the

20 Epicure Medical accounting, do you see that?

21 A. Um-hum.

22 Q. It says, "Please also pay Sarah and I.

23 I want my money sent to Foxhole, please."

24 Do you see that?

25 A. (Nodding.)

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1 SARAH SIMMERS

2 A. I did.

3 Q. How often did you receive distributions

4 from Epicure?

5 A. Initially, we were doing around 10,000

6 a month, and then when we were having difficulty

7 selling when the market kind of fell out, we

8 stopped doing that. We stopped distributing

9 money to the partners. At least that's what I

10 remember it being.

11 Q. Was there any process to determine what

12 the distribution amounts were?

13 A. There wasn't a formal process, no.

14 MR. PENN: I'd like to introduce

15 Exhibit 16. This is a document produced by your

16 counsel. It's DEF0426 through DEF0427.

17 (Simmers Exhibit 16 was marked

18 for ID.)

19 THE WITNESS: "Linda, I'd like to pay

20 Voyant some more money."

21 So can you shrink it because the e-mail

22 falls behind the Zoom. Yeah, there we go.

23 (Reviewing document.)

24 Okay. Scroll up, please.

25 BY MR. PENN:

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1 SARAH SIMMERS

2 I see it.

3 Q. If you -- I just scrolled down to the

4 September 6th, 2020, e-mail from Lee Ori to Dan

5 Reilly, and it says Epicure Medical accounting

6 address, and Lee Ori writes, "We also need to

7 distribute funds to the partners this week.

8 Dan, what do you need to be distributed? You

9 had indicated \$3,000."

10 Do you see that written there?

11 A. I do.

12 Q. Okay. Do you recall receiving

13 distributions of \$3,000 in the year 2020?

14 A. I mean, I don't remember specifically a

15 distribution on September -- what is it? --

16 September 6th or on or around -- I don't

17 remember it, but we -- I know that we equally

18 distributed. Whenever a distribution was done,

19 it was done equally.

20 Q. Do you know how often the funds were

21 distributed to the members?

22 A. Are you -- can you ask the question

23 differently?

24 Q. Did you receive distributions from

25 Epicure?

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1 SARAH SIMMERS

2 Q. (Complying.)

3 A. Yeah. (Reviewing document.)

4 Okay. So that's referring to Linda's

5 invoice. Okay. Okay. Okay. Got it.

6 Q. Okay. Do you recall receiving a

7 distribution of \$10,000 on or around

8 October 22nd?

9 A. Again, I don't remember the dates, but

10 I remember whenever there was a distribution, we

11 equally got one. So I'm going to say yes.

12 MR. PENN: Okay. I'd like to introduce

13 Exhibit 17.

14 (Simmers Exhibit 17 was marked

15 for ID.)

16 BY MR. PENN:

17 Q. This is a document produced by your

18 counsel. It's DEF3495 through DEF3497. I'll

19 just ask if you recognize the document.

20 A. Yes. It's the Epicure -- Epicure

21 balance sheet.

22 Q. And this is the balance sheet for

23 Epicure for -- as of December 31st, 2020; is

24 that correct?

25 A. That is correct, yes.

<p style="text-align: right;">Page 122</p> <p>1 SARAH SIMMERS</p> <p>2 Q. Okay. I'd just direct your attention</p> <p>3 to the section on distributions. It lists Lee</p> <p>4 Ori, Sarah Simmers and Dan Reilly.</p> <p>5 Do you see that?</p> <p>6 A. Um-hum.</p> <p>7 Q. And do you see what -- what -- it</p> <p>8 indicates a distribution \$43,000 for Sarah</p> <p>9 Simmers. Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. Is that accurate?</p> <p>12 A. That is accurate.</p> <p>13 Q. That's as of -- these are distributions</p> <p>14 through December 31st, 2020. Did you receive</p> <p>15 any distributions from Epicure in the year 2021?</p> <p>16 A. I did not.</p> <p>17 MR. KORANTENG: Robert, I don't see</p> <p>18 Exhibit 16 in the chat to the extent that it's</p> <p>19 been compiled by the court reporter maybe,</p> <p>20 unless I'm missing it.</p> <p>21 THE REPORTER: Is he still with us?</p> <p>22 THE WITNESS: I don't see him.</p> <p>23 MR. KORANTENG: Robert said he's having</p> <p>24 some technical difficulties. I guess he's not</p> <p>25 on here. He's trying to fix it and rejoin us.</p>	<p style="text-align: right;">Page 123</p> <p>1 SARAH SIMMERS</p> <p>2 THE VIDEOGRAPHER: Do you want to go</p> <p>3 off the record?</p> <p>4 MR. KORANTENG: Yes. Let's do that</p> <p>5 while we wait for him.</p> <p>6 THE VIDEOGRAPHER: The time is</p> <p>7 2:53 p.m., and we're going off the record.</p> <p>8 (Recess taken from 2:53 p.m.</p> <p>9 to 3:02 p.m.)</p> <p>10 THE VIDEOGRAPHER: The time is</p> <p>11 3:02 p.m., and we're back on the record.</p> <p>12 BY MR. PENN:</p> <p>13 Q. Miss Simmers I just want to go back to</p> <p>14 the prior exhibit, actually. We were discussing</p> <p>15 distribution on around September -- wait.</p> <p>16 Strike that.</p> <p>17 We were discussing a distribution</p> <p>18 around October 26th, 2020, for \$10,000. Do you</p> <p>19 recall that?</p> <p>20 A. (Nodding.)</p> <p>21 I do. I recall the discussion, yes.</p> <p>22 Q. Okay. Let me just put it up. Yes.</p> <p>23 Okay. So this was the document that we were</p> <p>24 discussing.</p> <p>25 When you received this -- if you</p>
<p style="text-align: right;">Page 124</p> <p>1 SARAH SIMMERS</p> <p>2 recall, when you received this \$10,000</p> <p>3 distribution, did you ask to be informed about</p> <p>4 points? Excuse me. Did you ask to be informed</p> <p>5 about Epicure's obligations, financial</p> <p>6 obligation?</p> <p>7 MR. KORANTENG: Objection to form of</p> <p>8 the question. It's vague.</p> <p>9 MR. PENN: I'll withdraw the question</p> <p>10 and try to re- -- restate it.</p> <p>11 BY MR. PENN:</p> <p>12 Q. When you had meetings with Dan Reilly</p> <p>13 and Lee Ori, did you collectively discuss the</p> <p>14 finance -- Epicure's financial obligation?</p> <p>15 A. Yes. I knew -- I knew of our financial</p> <p>16 obligations, absolutely.</p> <p>17 Q. And that includes -- does that include</p> <p>18 outstanding balances to your different vendors?</p> <p>19 A. Absolutely.</p> <p>20 MR. PENN: Okay. I'd like to introduce</p> <p>21 Exhibit 18.</p> <p>22 (Simmers Exhibit 18 was marked</p> <p>23 for ID.)</p> <p>24 BY MR. PENN:</p> <p>25 Q. This document was also produced by your</p>	<p style="text-align: right;">Page 125</p> <p>1 SARAH SIMMERS</p> <p>2 counsel. It's identified at DEF004807.</p> <p>3 Do you recognize this document?</p> <p>4 A. Yes.</p> <p>5 Q. And what is it?</p> <p>6 A. It's Foxhole's balance sheet.</p> <p>7 Q. And this is a balance sheet as of</p> <p>8 December 31st, 2021, correct?</p> <p>9 A. Correct.</p> <p>10 Q. So I'm on the first page. I'm looking</p> <p>11 at the other assets category.</p> <p>12 A. Okay.</p> <p>13 Q. There's a notation here that says "Due</p> <p>14 from SPP."</p> <p>15 A. Yes.</p> <p>16 Q. What is SPP?</p> <p>17 A. Scottsdale Professional Pharmacy.</p> <p>18 Q. It says the amount of \$131,789.85 is</p> <p>19 due to Foxhole. Do you know what that reflects?</p> <p>20 A. Yes. Foxhole when we had revenue from</p> <p>21 consulting loans, moneys, discussion with</p> <p>22 Scottsdale Professional.</p> <p>23 Q. Has that loan been paid back to</p> <p>24 Foxhole?</p> <p>25 A. It has not.</p>

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1 SARAH SIMMERS

2 Q. Do you happen to recall when the

3 maturity date is?

4 A. I don't.

5 Q. Moving down under the "Long-term

6 liabilities" section, there's a notation that

7 says "Due to Epicure." Do you see that?

8 A. (Nodding.)

9 Q. Do you see it or no?

10 A. No, I see it.

11 Q. Okay, okay. It says in the amount of

12 \$126,076.74 due to Epicure. Do you happen to

13 know what that relates to?

14 A. I don't recall any money being due to

15 Epicure from Foxhole. I don't. That doesn't

16 seem right. I don't -- I don't have any

17 recollection of any money being due from Foxhole

18 to Epicure.

19 Q. Okay.

20 MR. PENN: One moment, please.

21 (Brief pause in proceedings.)

22 MR. PENN: That's all the questions I

23 have.

24 MR. KORANTENG: Okay. Can we go off

25 the record for maybe 10, 15 minutes, 15 minutes

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1 SARAH SIMMERS

2 other way with the transactions between Epicure

3 and Voyant?

4 A. No.

5 Q. Okay. Was there any purchase orders

6 that were submitted by Foxhole to Voyant?

7 A. No.

8 Q. Were there any orders of any kind, you

9 know, for hand sanitizer from Foxhole to Voyant?

10 A. No.

11 Q. Okay. Did Foxhole pay Voyant any

12 moneys for any hand sanitizer ordered by

13 Epicure?

14 A. No.

15 Q. And did Foxhole receive any hand

16 sanitizer from Epicure?

17 A. No.

18 Q. No -- strike that question.

19 Did Foxhole receive any hand sanitizer

20 from Voyant?

21 A. No.

22 Q. Okay. And did Voyant issue any

23 invoices to Foxhole Medical at all?

24 A. No.

25 Q. Did Foxhole receive any compensation

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1 SARAH SIMMERS

2 tops, while I look at what questions I may have,

3 and we can get back on?

4 THE VIDEOGRAPHER: The time's

5 3:10 p.m., and we're going off the record.

6 (Recess taken from 3:10 p.m.

7 to 3:24 p.m.)

8 THE VIDEOGRAPHER: The time is

9 3:24 p.m., and we're back on the record.

10 MR. KORANTENG: So, Miss Simmers, I

11 think you know me. I don't need any

12 introductions.

13 THE WITNESS: I know you.

14 MR. KORANTENG: I'll go straight to my

15 questions. Okay. You're doing well. We have a

16 few minutes to go, and then this should be over.

17

18 EXAMINATION

19 BY MR. KORANTENG:

20 Q. There's been a lot of testimony about

21 Foxhole Medical. I think you and Robert have

22 discussed that extensively, but I have a few

23 questions about that. And, specifically, other

24 than the LOI that Foxhole submitted on

25 March 26th of 2020, was Foxhole involved in any

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1 SARAH SIMMERS

2 from Epicure for any services relating to its

3 hand sanitizer business?

4 A. No.

5 Q. All right. And did Foxhole receive any

6 compensation from Epicure as a result of the

7 transaction between Epicure and Voyant?

8 A. No.

9 Q. Okay. Do you know of any other

10 involvement whatsoever between Foxhole and

11 Voyant other than that LOI that was sent on

12 March 26th of 2020?

13 A. No.

14 Q. Okay. Let's talk about Epicure.

15 What -- I think you've testified, you know,

16 significantly about your role in Epicure, but I

17 want to ask you briefly to recap each of your

18 roles, yours, Lee Ori's and Dan Reilly's role in

19 Epicure.

20 MR. PENN: Objection.

21 BY MR. KORANTENG:

22 Q. You can go ahead and answer.

23 A. Oh, okay.

24 Q. Same rule. When I ask a question,

25 Robert can object, but subject to that

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1 SARAH SIMMERS

2 objection, you can go ahead and answer if you

3 understand my question.

4 A. My role, as I have testified, is

5 infrastructure. I worked on the website, I

6 worked on branding, I worked on the RepZio

7 project, contracts for the sales team. I'm

8 trying to think what else. Oh, I did the micro

9 merchant systems for credit cards.

10 Lee's role was business development and

11 the manufacturer relationships. Procurement I

12 think would be a good word. And Dan was largely

13 sales.

14 Q. Okay. And Foxhole, you guys weren't

15 employees of Foxhole, were you -- not Foxhole --

16 but Epicure, were you?

17 A. We were not employees, no.

18 Q. Okay. And so I think earlier you also

19 testified that you, Dan, Reilly, and Lee Ori

20 were all managers of Epicure; is that correct?

21 A. That is correct.

22 Q. So in performing any of these roles on

23 behalf of Epicure, in what capacity were you

24 guys performing these roles? In performing

25 these roles that you just discussed --

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1 SARAH SIMMERS

2 relating to those e-mails about Lee Ori's

3 transactions or interactions with Voyant. I

4 think you recall some of that testimony -- do

5 you?

6 A. Yes.

7 Q. Now, let me ask, as far as Lee Ori's

8 interaction was Voyant, was he authorized by

9 Epicure, you and Dan Reilly to act on behalf of

10 Epicure in relation to these transactions?

11 MR. PENN: Objection.

12 THE WITNESS: Yes.

13 BY MR. KORANTENG:

14 Q. Okay. So Lee was -- in what capacity

15 was he authorized? I mean what was -- what was

16 he authorized to do, if you can speak to that.

17 Was he --

18 A. Well, just as I test- -- as my

19 testimony has said, his job was to procure

20 product on behalf of Epicure.

21 Q. Okay. So he had your authority and

22 Dan's authority as managers to interact with

23 Voyant?

24 A. Yes.

25 Q. On these transactions that are the

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1 SARAH SIMMERS

2 A. Yes.

3 Q. -- for Epicure, in what capacity were

4 you guys performing those roles?

5 MR. PENN: Objection.

6 THE WITNESS: Define "capacity."

7 BY MR. KORANTENG:

8 Q. Were you performing those roles as

9 employees, independent contractors, managers?

10 A. As managers.

11 MR. PENN: Objection.

12 THE WITNESS: Sorry, Robert.

13 BY MR. KORANTENG:

14 Q. So you were performing these roles as

15 managers of Epicure?

16 A. Yes.

17 Q. You testified about -- I think Robert

18 had asked you earlier about meetings that you

19 had to make decisions, and you said that you

20 guys had many telephone conversations about it.

21 So was that typically how you guys made

22 decisions relating to Epicure?

23 A. Yes.

24 Q. Right. And let me ask, I think there's

25 been some testimony of e-mails and testimony

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1 SARAH SIMMERS

2 basis of this lawsuit; is that correct?

3 MR. PENN: Objection.

4 THE WITNESS: Yes.

5 BY MR. KORANTENG:

6 Q. Okay. Let me rephrase that question.

7 Did he -- did Lee Ori have authority to interact

8 with Voyant on these transactions that formed

9 the basis of the lawsuit that -- in which you

10 know -- for which you testified?

11 A. Yes.

12 MR. PENN: Objection.

13 BY MR. KORANTENG:

14 Q. All right. When Lee Ori submitted the

15 LOI -- I think earlier you had testified -- and

16 I think your quote -- you said "Lee had put in

17 the LOI," and this was in relation to the

18 Foxhole LOI.

19 A. (Nodding.)

20 Q. What did you mean by that?

21 MR. PENN: Objection.

22 THE WITNESS: I meant that Lee -- Lee

23 in his role sent the LOI is what I meant by

24 that.

25 BY MR. KORANTENG:

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1 SARAH SIMMERS

2 Q. All right. So you weren't implying

3 that somehow Lee Ori as a person sent the LOI,

4 were you?

5 A. No.

6 MR. PENN: Objection. Misstates

7 testimony.

8 BY MR. KORANTENG:

9 Q. Okay. Okay. So when Lee had submitted

10 the LOI on behalf of -- on behalf of Foxhole, in

11 what capacity was he submitting that LOI?

12 MR. PENN: Objection.

13 THE WITNESS: From what I understood,

14 it's -- it was a placeholder until Epicure was

15 formed.

16 BY MR. KORANTENG:

17 Q. And when Lee submitted the LOI for

18 Epicure, that was dated June -- I think

19 June 4th, that you had -- you and counsel had

20 discussed, do you understand -- what's your

21 understanding of the capacity in which he was

22 submitting that LOI?

23 MR. PENN: Objection.

24 THE WITNESS: As a manager of Epicure.

25 MR. KORANTENG: Okay. I don't think I

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1 SARAH SIMMERS

2 IN THE UNITED STATES DISTRICT COURT

3 EASTERN DISTRICT OF MISSOURI

4 EASTERN DIVISION

5 AWARE PRODUCTS LLC,

6 D/B/A VOYANT BEAUTY,

7 Plaintiff,

8 vs. No. 4:21-cv-249-JCH

9 EPICURE MEDICAL, LLC,

10 FOXHOLE MEDICAL, LLC,

11 and LEE ORI,

12 Defendants.

13 _____/

14 I hereby certify that I have read the

15 foregoing transcript of my deposition given at

16 the time and place aforesaid, consisting of

17 pages 1 to 135, inclusive, and I do again

18 subscribe and make oath that the same is a true,

19 correct, and complete transcript of my

20 deposition so given as aforesaid and includes

21 changes, if any, so made by me.

22 _____

23 SARAH SIMMERS

24 SUBSCRIBED AND SWORN TO

25 before me this ____ day

of _____, A.D. _____.

Notary Public

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1 SARAH SIMMERS

2 have any further questions, Robert.

3 MR. PENN: Okay. Give me -- let's just

4 go off the record for a couple minutes, please.

5 MR. KORANTENG: Okay.

6 THE VIDEOGRAPHER: The time is

7 3:33 p.m., and we're going off the record.

8 (Recess taken from 3:33 p.m.

9 to 3:36 p.m.)

10 THE VIDEOGRAPHER: The time is

11 3:36 p.m., and we're back on the record.

12 MR. PENN: I have no further questions.

13 THE VIDEOGRAPHER: The time is

14 3:36 p.m., and we're going off the record.

15 (Deposition concluded at 3:36 p.m. CST.)

16

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1 SARAH SIMMERS

2 REPORTER CERTIFICATE

3 I, Deborah Habian, a Certified

4 Shorthand Reporter within and for the State of

5 Illinois, do hereby certify:

6 That previous to the commencement of

7 the examination of the witness, the witness was

8 remotely duly sworn to testify the whole truth

9 concerning the matters herein;

10

11 That the foregoing deposition was

12 reported stenographically by me, was thereafter

13 reduced to printed transcript by me, and

14 constitutes a true record of the testimony given

15 and the proceedings had;

16

17 That the said deposition was taken

18 remotely before me at the time and place

19 specified;

20

21 That the reading and signing by the

22 witness of the deposition transcript was not

23 discussed within the body of this transcript;

24

25 That I am not a relative or employee of

attorney or counsel, nor a relative or employee

of such attorney or counsel for any of the

parties hereto, nor interested directly or

indirectly in the outcome of this action.

IN WITNESS WHEREOF, I do hereunto set

my hand this 8th day of April, 2022.

DEBORAH HABIAN, CSR, RMR, CRR, CLR
IL CSR NO. 084-02432
MO CCR NO. 1409

1 NAME OF CASE:
2 DATE OF DEPOSITION:
3 NAME OF WITNESS:
4 Reason Codes:
5 1. To clarify the record.
6 2. To conform to the facts.
7 3. To correct transcription errors.
8 Page _____ Line _____ Reason _____
9 From _____ to _____
10 Page _____ Line _____ Reason _____
11 From _____ to _____
12 Page _____ Line _____ Reason _____
13 From _____ to _____
14 Page _____ Line _____ Reason _____
15 From _____ to _____
16 Page _____ Line _____ Reason _____
17 From _____ to _____
18 Page _____ Line _____ Reason _____
19 From _____ to _____
20 Page _____ Line _____ Reason _____
21 From _____ to _____
22 Page _____ Line _____ Reason _____
23 From _____ to _____
24
25 _____

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